

2569
No. 12154

United States
Court of Appeals

for the Ninth Circuit

WILLIAM R. McCOMB, Administrator of the
Wage and Hour Division, United States De-
partment of Labor,

Appellant,

vs.

ROW RIVER LUMBER COMPANY, a Corpora-
tion,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Oregon

FILED
APR 15 1949

PAUL R. O'BRIEN,
CLERK



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WILLIAM R. McCOMB, Administrator of the
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

WILLIAM S. TYSON,
HERMAN MARX,
JAMES F. SCOTT,
JOHN J. BABE,
GEORGE H. FOLEY,
BESSIE MARGOLIN,
KENNETH C. ROBERTSON,

U. S. Dept. of Labor, Room 144,
Federal Office Building,
Fulton & Leavenworth Streets,
San Francisco 2, California.

HENRY L. HESS,
507 U. S. Courthouse,
Portland, Oregon,
For Appellant.

CARL E. DAVIDSON,
CHARLES P. DUFFY,
Yeon Building,
Portland, Oregon,
For Appellee.

In the District Court of the United States
for the District of Oregon

Civil Action—File No. 3917

WILLIAM R. McCOMB, Administrator of the
Wage and Hour Division, United States De-
partment of Labor,

Plaintiff,

vs.

ROW RIVER LUMBER COMPANY, a corpo-
ration,

Defendant.

COMPLAINT

I.

Plaintiff brings this action to enjoin defendant from violating the provisions of Section 15(a) (1), 15(a) (2), and 15(a) (5) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, 52 Stat. 1060, 29 U. S. C., sec. 201), hereinafter called the Act.

II.

Jurisdiction of this action is conferred upon the Court by Section 17 of the Act.

III.

Defendant is, and at all times hereinafter mentioned was, a corporation organized under and existing by virtue of the laws of the State of Oregon, having its principal office and a place of business at 823 Terminal Sales Building, Portland, Oregon, and a saw and planing mill at approximately six

miles southeast of Dorena, in Lane County, State of Oregon, within the jurisdiction [1*] of this Court, and is, and at all times hereinafter mentioned was, engaged at said saw and planing mill in the production, sale and distribution of logs, rough green and planed lumber.

IV.

At all times hereinafter mentioned, defendant employed and is employing approximately 98 employees in and about its saw and planing mill in Lane County, Oregon, in the production of logs, rough green and planed lumber, and in processes or occupations necessary to such production. Substantial quantities of the goods produced by these employees have been, and are being, produced for interstate commerce and have been, and are being, shipped, delivered, transported, offered for transportation, and sold in interstate commerce from defendant's said place of business to other states, and shipped, delivered or sold from defendant's said place of business with knowledge that shipment, delivery or sale thereof in interstate commerce to other states is intended.

V.

Defendant repeatedly has violated and is violating the provisions of Sections 7 and 15(a) (2) of the Act by employing some of its employees in the production of goods for interstate commerce, as aforesaid, for work weeks longer than 40 hours during the period since October 21, 1942, without compensating these employees for their employment

in excess of 40 hours, in work weeks during such period, at rates not less than one and one-half times the regular rate at which they were employed.

VI.

On October 21, 1938, the Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to the authority conferred upon him by Section 11(c) of the Act, duly issued and promulgated regulations prescribing the records of persons employed and of wages, hours, and other conditions and practices of employment to be made, kept, and preserved by every employer subject to any provision of the Act. The said regulations, and [2] amendments thereto, were published in the Federal Register and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516.

VII.

Defendant, an employer subject to the provisions of the Act, repeatedly has violated and is violating the provisions of Sections 11(c) and 15(a) (5) of the Act, in that since October 21, 1942, it has failed to make, keep, and preserve adequate and accurate records of its employees and the wages, hours, and other conditions and practices of employment maintained by it, as prescribed by the said regulations, in that the records kept by defendant failed to show adequately and accurately, among other things, the hours worked each workday and each workweek,

the regular rate of pay, the basis upon which wages are paid, the total straight-time earnings for each workweek, and the total weekly overtime excess compensation with respect to some of its employees.

VIII.

Defendant repeatedly has violated and is violating the provisions of Section 15(a) (1) of the Act in that, since October 21, 1942, it has shipped, delivered, transported, offered for transportation, and sold in interstate commerce from defendant's said place of business to other states, and has shipped, delivered, or sold from defendant's said place of business with knowledge that shipment, delivery or sale thereof in interstate commerce to other states is intended, goods in the production of which some of its employees were employed in violation of Section 7 of the Act, as alleged.

IX.

Defendant has, since October 21, 1942, repeatedly violated the aforesaid provisions of the Act. A judgment enjoining and restraining the violations hereinabove alleged is specifically authorized by Section 17 of the Act. [3]

Wherefore, cause having been shown, plaintiff demands judgment permanently enjoining and restraining defendant, its officers, agents, servants, employees, and attorneys, and all persons acting or claiming to act in its behalf and interest, from violating the provisions of Sections 15(a) (1), 15(a)

(2), and 15(a) (5) of the Act, and such other and further relief as may be necessary and appropriate.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ HERMAN MARX,
Acting Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney.

United States Department of Labor, Attorneys for
Plaintiff.

/s/ HENRY L. HESS,
United States Attorney.

[Endorsed]: Filed September 30, 1947. [4]

[Title of District Court and Cause.]

BILL OF PARTICULARS

In accordance with the stipulation entered into by the parties to this action by their respective attorneys, plaintiff hereby voluntarily furnishes defendant with the following bill of particulars:

1. The class of employees referred to in the complaint with respect to whom the plaintiff alleges that the Fair Labor Standards Act of 1938 has been violated, are individuals employed in the cookhouse and kitchen, and consists of Ida Garoutte, Edith LeCompte, Margaret Cooper, Edith Ponton, and Shirley Ratcliff.

2. In the event that during the trial of this action it appears that additional employees not now

known to plaintiff were employed by defendant as cookhouse and kitchen personnel, in violation of the said Act, plaintiff reserves the right to serve an amended bill of particulars as to the names of such other employees.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ HERMAN MARX,
Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney, United States Department of
Labor, Attorneys for Plaintiff.

[Endorsed]: Filed October 20, 1947. [5]

[Title of District Court and Cause.]

ANSWER

Defendant, for its answer to the complaint herein, admits, denies, and alleges as follows:

I.

Admits all of the allegations of Paragraph I, except that it denies that it has violated or is violating any of the provisions of the Fair Labor Standards Act of 1938.

II.

Admits all of the allegations of Paragraphs II, III, and IV.

III.

Denies all of the allegations of Paragraph V.

IV.

Admits all of the allegations of Paragraph VI.

V.

Denies all of the allegations of Paragraphs VII, VIII, and IX.

Defendant specifically denies that the persons named in plaintiff's bill of particulars herein are or were its employees.

Wherefore, defendant demands judgment dismissing the complaint herein and awarding to the defendant its costs and disbursements.

/s/ CARL E. DAVIDSON,
/s/ CHARLES P. DUFFY,
Attorneys for Defendant.

Due service of the within Answer is hereby acknowledged this 20th day of October, 1947, at Portland, Oregon.

/s/ FLOYD D. HAMILTON,
Attorney for Plaintiff.

[Endorsed]: Filed October 20, 1947. [6]

[Title of District Court and Cause.]

MEMORANDUM OPINION

There is a catch in this case. Merely by designating as salary what is now called profit, the defendant could put the cookhouse manager beyond the purview of the Act, as an executive or administrative employee. Thus by an exercise in semantics,

what appeared to be unlawful becomes lawful. On such a dubious fact situation it does not seem that equity should be called on to exercise the extraordinary power of jurisdiction.

Dated June 15, 1948.

/s/ CLAUDE McCOLLOCH,
Judge.

[Endorsed]: Filed June 15, 1948. [7]

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having come on regularly for trial without a jury before the Honorable Claude McCulloch on March 4 and 5, 1948, at Portland, Oregon, the plaintiff being represented by Mr. James F. Scott of the Office of the Solicitor, United States Department of Labor, and the defendant being represented by Messrs. Carl E. Davidson and Charles P. Duffy; whereupon testimony and evidence having been introduced on behalf of the parties at the trial, oral argument having been duly had, and written briefs having been filed and considered; and the Court, having rendered its decision on June 15, 1948, and being fully advised in the premises, makes and adopts the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The plaintiff instituted this action to enjoin the defendant from violating the provisions of Sec-

tions 15(a) (1), 15(a) (2), and 15(a) (5) of the Fair Labor Standards Act of 1938 (Act of June 25, 1938, c. 676, Stat. 1060, 29 U. S. C., sec. 201 et seq.), hereinafter called the Act.

2. The defendant is an Oregon corporation with its principal office located at 823 Terminal Sales Building, Portland, [8] Oregon, and a saw and planing mill located about 13 miles from Cottage Grove, Oregon, where it employs an average of 167 employees in the production of lumber, substantially all of which is sold and shipped in interstate commerce.

3. The defendant's saw and planing mill, together with its mill office, mill pond, loading dock and railroad track, bunkhouse and cookhouse, are located on a 35-acre tract of land which is taxed as a single unit and is all under the over-all supervision of Mr. H. B. Bebe, mill superintendent. The mill contains all the physical properties and equipment for producing lumber, including the cookhouse and equipment, which are a part of the integrated unit of production.

4. The cookhouse was remodeled by the defendant during the period from September to December, 1942, from a bunkhouse it owned so as to provide a place for defendant's employees to obtain meals. Defendant has borne the entire cost of remodeling, maintaining and repairing the cookhouse, and of furnishing and replacing all equipment used therein, which out-of-pocket capital investment amounts to \$3,806.30. Defendant pays the operating expense for water, electricity and fuel used in its cookhouse,

which amounted to \$348.11 in 1947, and also furnishes lodging to the cook and helper, which facilities were valued at \$480.00 during 1947.

5. The cook is retained under an oral agreement which has no definite time to run and can be ended by either party without notice. The only permanency of the relation of the cook to the company is that so long as it is mutually satisfactory, the agreement will continue.

6. The premises and equipment of the defendant are used for the work. The cook has no investment in any facilities or equipment. The cook purchases the food, and the one helper whom the cook has at any one time is selected and paid by the cook.

7. The employees are charged a fixed price per meal, [9] which price has gradually been increased by the defendant and the cook from 40 to 60 cents and is deducted by the defendant from the employees' wages and is paid by the defendant to the cook. Also, defendant pays the cook an additional subsidy for each meal served employees, the amount of which subsidy has been increased by the defendant from 10 to 15 cents and is paid by the defendant out of its own funds. The defendant pays the subsidy even if it is unable to make the payroll deductions from the employees' wages. The defendant also pays the subsidy on meals served to employees of independent contractors with defendant.

8. The purpose of the subsidy, which amounted to \$2,853.30 during 1947, is twofold: First, to pay part of the operating expenses of the cookhouse, and

second, the defendant competes with mills located in Cottage Grove, Oregon, for labor and it is necessary that the defendant offer reasonably priced meals as an inducement to attract and retain employees to work at its mill.

9. The defendant and the cook fixed the price of employees' meals and the cook never deviates therefrom. While the matter is discussed with the cook when increases have been made, the final determination is made by defendant's president, Mr. Edmund Hayes, and the cook agrees to his action.

10. The cook devotes her full time to working for the defendant. While thus engaged she does not hold herself out to other mills as being in the market to cook for them.

11. The nature of the cook's work requires no particular instructions. However, such supervision as is necessary has been exercised by defendant. Mr. Bebe keeps in touch with the cookhouse and eats there each week and makes it a point to observe its operation. He has the right to give any necessary or appropriate instructions and would exercise that supervision when required. In case of a difference of opinion with the cook, Mr. Bebe would expect the cook to comply with what he asked her to do. If the cook's services are not satisfactory to Mr. Hayes or Mr. Bebe, they can dismiss her. [10]

12. A monthly average of 53 employees eats one or more meals per day (including lunches prepared for the woods crew) at the defendant's cookhouse. The number of meals served transients is negligible. The cook is primarily dependent upon the meals

served to the employees for her ability to run the cookhouse, and, under the circumstances apparent from the record, she could not operate the cookhouse for the transient trade.

13. The cook is not subject to any actual loss in her operation of the cookhouse. The profit the cook makes depends upon her efficiency in operating the restaurant, plus the subsidy paid her by the defendant. During 1947, the subsidy accounted for 93.6 percent of the cook's net earnings.

14. The cook's duties require special aptitude and considerable managerial skill.

15. During the war, the company obtained supplemental food ration points and purchased food in Portland, Oregon, for the operation of the cookhouse. When a substitute cook took over during the regular cook's illness, the defendant hired and paid the kitchen helper and withheld income taxes from the wages it paid her. The company has authorized the cook to order cookhouse supplies and equipment and to bind the company for payment thereof or to make payment for which she is reimbursed by the company. The cook can get an advance from the defendant on draw day the same as defendant's mill and woods employees.

16. Other than the public eating places in Cottage Grove, Oregon, about 13 miles away, there is no other public eating place available to defendant's employees except the defendant's cookhouse. The employees who live in defendant's bunkhouses would

be unable to work for the company if they were not able to eat at the cookhouse or other place nearby. Employees who live at their own homes eat their lunch at the cookhouse, and from 3 to 18 lunches are prepared for the woods crew. [11]

17. The defendant's admitted purpose for this arrangement for operating its cookhouse is that there is a much greater chance of waste when the company operates it than when an individual operates it. More friction with the workmen.

18. The cook works about 73 hours per week and during 1947 earned an average of 89.7 cents per hour. No extra overtime was paid the cook by the defendant for work in excess of 40 hours per week, and the defendant has not kept any wage and hour records concerning the work of the cook and helper.

CONCLUSIONS OF LAW

1. The Court has jurisdiction of the parties and the subject matter of this action.

2. The cook is an employee of the defendant within the meaning of the Fair Labor Standards Act of 1938. The helper is not.

3. The said cook and kitchen helper are engaged in the production of goods for interstate commerce and in processes or occupations necessary thereto.

4. The defendant has not kept the records of the cook required by the act and regulations.

5. The cook is an executive and administrative employee as defined in the regulations. The pleadings and pre-trial order may be deemed amended accordingly.

6. By reason of the foregoing, the complaint herein should be dismissed.

Dated: Oct. 16th, 1948.

/s/ CLAUDE McCULLOCH,
District Judge.

[Endorsed]: Filed October 16, 1948. [12]

In the District Court of the United States
for the District of Oregon

Civil No. 3917

WILLIAM R. McCOMB, Administrator of the
Wage and Hour Division, United States De-
partment of Labor,

Plaintiff,

vs.

ROW RIVER LUMBER COMPANY, a corpo-
ration,

Defendant.

JUDGMENT

This cause having come on regularly for trial without a jury before the Honorable Claude McCulloch, one of the judges of the above-entitled court, at Portland, Oregon, on the 4th and 5th day of March, 1948, plaintiff appearing by James F. Scott,

of the Office of the Solicitor, United States Department of Labor, defendant appearing by Carl E. Davidson and Charles P. Duffy, its attorneys; and

The parties having produced testimony and evidence in behalf of their respective contentions; and the court having considered fully all matters of fact and law presented by the parties, and findings of fact and conclusions of law having been submitted and findings of fact and conclusions of law having heretofore been signed by the court and entered of record on the 16th day of October, 1948;

Now, therefore, based upon the foregoing findings of fact and conclusions of law,

It is hereby considered, ordered and adjudged that the complaint herein be and the same hereby is dismissed.

Dated at Portland, Oregon, this 16th day of October, 1948.

CLAUDE McCOLLOCH,
District Judge.

Entered in docket October 16, 1948.

[Endorsed]: Filed October 16, 1948. [13]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, plaintiff above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the whole of the final judgment entered in this action on October 16, 1948.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ JOHN J. BABE,
Assistant Solicitor.

/s/ GEORGE H. FOLEY,
Acting Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney.

United States Department of Labor, Attorneys for
Plaintiff.

[Endorsed]: Filed December 15, 1948. [14]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

To the Clerk of the above-named Court:

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, the appellant designates the following portions of the record, proceedings, and evidence to be included in the record on appeal in this action:

1. Complaint.
2. Bill of Particulars.
3. Defendant's answer to complaint.
4. Reporter's transcript of the proceedings at the trial, a copy of which is filed herewith.
5. Plaintiff's Exhibit 1—Plaintiff's interrogatories.
6. Plaintiff's Exhibit 2—Defendant's Answers to Written Interrogatories.
7. Plaintiff's Exhibit 3—Group of statements, Row River Lumber Company, in re Mrs. Ida Garouette.
8. Plaintiff's Exhibit 4—Group of Statements, Row River Lumber Company, in re Mrs. Edith LeCompte. [15]
9. Plaintiff's Exhibit 6—Journal of Mrs. Edith LeCompte.

10. Plaintiff's Exhibit 7—Memorandum in re Cash received by Mrs. Edith LeCompte.
11. Memorandum Opinion dated June 15, 1948.
12. Findings of Fact and Conclusions of Law, filed October 16, 1948.
13. Judgment.
14. Notice of Appeal, filed December 15, 1948.
15. This Designation.
16. Appellant's Statement of Points on Which He Intends to Rely.
17. Stipulation as to Original Exhibits.
18. Order as to Original Exhibits.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ BESSIE MARGOLIN,
Assistant Solicitor.

/s/ KENNETH C. ROBERTSON,
Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney.

United States Department of Labor, Attorneys for Appellant.

Service of a copy hereof is hereby acknowledged this 23rd day of December, 1948.

/s/ CARL E. DAVIDSON,
/s/ CHARLES P. DUFFY,
Attorneys for Appellee.

[Title of District Court and Cause.]

APPELLANT'S STATEMENT OF POINTS
ON WHICH HE INTENDS TO RELY

Pursuant to Rule 75 (d) of the Federal Rules of Civil Procedure, appellant states that the points on which he intends to rely on this appeal are as follows:

1. The Court erred in holding that the kitchen helper is not an employee of the defendant within the meaning of the Fair Labor Standards Act of 1938.

2. The Court erred in holding that the cook is an executive and administrative employee, as defined in the Regulations issued pursuant to Section 13 (a)(1) of the Fair Labor Standards Act.

3. The Court erred in failing to hold that the cook has been employed in violation of the overtime requirements of the Fair Labor Standards Act.

4. The Court erred in failing to hold that defendant has not kept the records of the kitchen helper, as required by the Fair Labor Standards Act and Regulations issued thereunder.

5. The Court erred in not holding that defendant has violated Section 15 (a)(1) of the Fair Labor Standards Act.

6. The Court erred in denying plaintiff-appel-

lant's prayer [17] for an injunction and in dismissing the action.

/s/ WILLIAM S. TYSON,
Solicitor

/s/ BESSIE MARGOLIN,
Assistant Solicitor

/s/ KENNETH C. ROBERTSON,
Regional Attorney

/s/ JAMES F. SCOTT,
Senior Attorney

United States Department of Labor,
Attorneys for Appellant.

Service of a copy hereof is hereby acknowledged
this 23 day of December, 1948.

/s/ CARL E. DAVIDSON
/s/ CHARLES P. DUFFY
Attorneys for Appellee.

[Endorsed] Filed January 7, 1949. [18]

[Title of District Court and Cause.]

STIPULATION AS TO ORIGINAL EXHIBITS

Pursuant to Rule 75 (i) of the Federal Rules
of Civil Procedure,

It Is Stipulated and Agreed by and between the
parties hereto, through their respective counsel, that,
subject to the approval of the Court, the originals
of plaintiff-appellant's Exhibits 3, 4 and 6 at the
trial of this action be sent to the United States Cir-

cuit Court of Appeals for the Ninth Circuit, in lieu of copies thereof, because of the expense involved in making said copies.

Dated: December 21, 1948.

/s/ WILLIAM S. TYSON,
Solicitor

/s/ BESSIE MARGOLIN,
Assistant Solicitor

/s/ KENNETH C. ROBERTSON,
Regional Attorney

/s/ JAMES F. SCOTT,
Senior Attorney
United States Department of Labor,
Attorneys for Appellant.

/s/ CARL E. DAVIDSON
/s/ CHARLES P. DUFFY
Attorneys for Appellee.

[Endorsed]: Filed January 7, 1949 [19]

[Title of District Court and Cause.]

ORDER AS TO ORIGINAL EXHIBITS

Upon consideration of the stipulation entered into by the parties hereto that the originals of plaintiff-appellant's Exhibits 3, 4 and 6 at the trial of this action be sent to the United States Circuit Court of Appeals for the Ninth Circuit in lieu of copies thereof, and it appearing to the Court that such originals should be so sent,

It Is Ordered that the originals of said exhibits be included by the Clerk of this Court in the record on appeal in this action, in lieu of copies thereof, subject to the further orders of the United States Circuit Court of Appeals for the Ninth Circuit in regard thereto.

Dated: Jan. 7, 1949.

/s/ CLAUDE McCOLLOCH,
United States District Judge. [20]

The undersigned hereby consent to the form and contents of the foregoing Order.

/s/ WILLIAM S. TYSON,
Solicitor

/s/ BESSIE MARGOLIN,
Assistant Solicitor

/s/ KENNETH C. ROBERTSON,
Regional Attorney

/s/ JAMES F. SCOTT,
Senior Attorney

United States Department of Labor,
Attorneys for Appellant.

/s/ CARL E. DAVIDSON
/s/ CHARLES P. DUFFY
Attorneys for Appellee.

[Endorsed]: Filed January 7, 1949. [21]

[Title of District Court and Cause.]

DOCKET ENTRIES

1947

Sept. 30—Filed complaint.

Sept. 30—Issued summons—to Marshal.

Oct. 2—Filed summons with return.

Oct. 9—Filed notice of motion and motion for bill of particulars.

Oct. 20—Filed stipulation to furnish bill of particulars and withdraw motion.

Oct. 20—Filed bill of particulars.

Oct. 20—Filed and entered order withdrawing motion for bill of particulars. Fee.

Oct. 20—Filed answer.

Oct. 20—Entered order setting for pre-trial conference Nov. 10, 1947. Fee.

Oct. 30—Entered order canceling pre-trial date of Nov. 10, 1947. McC.

Nov. 17—Entered order admitting Herman Marks and James Scott specially. Fee.

Nov. 17—Record of pre-trial conference and order setting for trial on January 20, 1948. McC.

1948

Jan. 2—Filed interrogatories of plaintiff.

Jan. 7—Entered order canceling trial date of Jan. 20 and resetting for trial on Feb. 10, 1948. McC.

Jan. 19—Filed answers to written interrogatories.

Jan. 28—Entered order setting for trial on Feb. 24, 1948. McC.

Feb. 25—Issued subpoena and 13 copies to attorney for plaintiff.

1948

- Feb. 26—Filed petition of plaintiff for subpoena duces tecum.
- Feb. 26—Filed and entered order for subpoena duces tecum. McC.
- Feb. 26—Issued two subpoenas duces tecum to Attorney Scott.
- Feb. 10—Entered order resetting to March 4, 1948, for trial. McC.
- Mar. 4—Record of trial. McC.
- Mar. 5—Record of trial and order taking under advisement. McC.
- Mar. 5—Filed subpoena.
- Mar. 5—Filed subpoena duces tecum.
- Mar. 8—Filed exhibits (on trial) 1 to 4, 6 and 7.
- Mar. 18—Entered order that plaintiff file brief 30 days after receipt of transcript; 30 days to answer; 15 days to reply. McC.
- Mar. 23—Filed transcript of proceedings March 4, 5, 1948.
- Apr. 22—Filed and entered order allowing plaintiff to May 8 to file brief with stipulation attached. McC.
- Apr. 26—Filed stipulation and filed and entered order for withdrawal of exhibits 4, 6 and 7. McC.
- May 10—Filed brief of plaintiff.
- June 4—Filed defendant's brief to Judge McColloch.
- June 15—Filed memorandum opinion. McC. [22]
- Aug. 2—Filed plaintiff's objections to defendant's proposed findings, etc.

1948

Aug. 2—Filed points and authorities supporting plaintiff's request.

Aug. 3—Entered order setting hearing on plaintiff's objections to defendant's proposed findings of fact and conclusions of law set for Sept. 13, 1948. McC.

Sept. 13—Record of hearing on plaintiff's objections to defendant's proposed findings and conclusions—argued and reserved. McC.

Sept. 23—Filed memorandum opinion. McC.

Oct. 16—Filed and entered findings of fact and conclusions of law. McC.

Oct. 16—Filed and entered judgment for defendant. (Case dismissed.) McC.

Dec. 15—Filed notice of appeal by U. S.

Dec. 15—Mailed notice of appeal to attorneys for defendant.

1949

Jan. 7—Filed appellant's designation of contents of record on appeal.

Jan. 7—Filed appellant's statement of points.

Jan. 7—Filed stipulation re order to send original exhibits to Court of Appeals.

Jan. 7—Filed and entered order to send original exhibits to Court of Appeals. McC. [23]

In the District Court of the United States
For the District of Oregon

United States of America,
District of Oregon—ss.

CLERK'S CERTIFICATE

I, Lowell Mundorff, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 24 inclusive, constitute the transcript of record upon the appeal from a judgment of said court in a cause therein numbered Civil 3917, in which William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, is plaintiff and appellant, and Row River Lumber Company, a corporation, is defendant and appellee; that said transcript has been prepared by me in accordance with the designation of contents of the record on appeal filed by the appellant and in accordance with the rules of court; that I have compared the foregoing transcript with the original thereof and that it is a full, true and correct transcript of the record and proceedings had in said court in said cause, in accordance with the said designation as the same appears of record and on file at my office and in my custody.

I further certify that I have enclosed under separate cover a duplicate transcript of the testimony taken in this cause on March 4th and 5th, 1948; also original exhibits 3, 4 and 6, and copies of exhibits 1, 2 and 7.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court in Portland, in said District, this 12th day of January, 1949.

(Seal) LOWELL MUNDORFF,
Clerk. [24]

In the District Court of the United States
For the District of Oregon

Civil No. 3917

WILLIAM R. McCOMB, Administrator of the
Wage and Hour Division, United States De-
partment of Labor, Plaintiff,

vs.

ROW RIVER LUMBER COMPANY, a corpora-
tion, Defendant.

Portland, Oregon,

Thursday, March 4, 1948

Before: Honorable Claude McColloch, Judge.

Appearances: Mr. James F. Scott, Attorney,
Wage and Hour Division, United States Depart-
ment of Labor, Attorney for Plaintiff. Mr. Carl
E. Davidson and Mr. Charles P. Duffy, Attorneys
for Defendant.

Court Reporter: Ira G. Holcomb.

PROCEEDINGS OF TRIAL:

Mr. Scott: Before we start this case, your Honor, there [1*] are two things I would like to ask you about. One is, I have a petition for a

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

subpoena duces tecum and an order here for a subpoena duces tecum addressed to the defendant and to Mr. Hayes, the president, which I would like to present to your Honor.

The Court: Can't you settle that between you? He wants some of your records. Do you have them here?

Mr. Davidson: I don't know. We have some of them. We have three of the items.

The Court: Have you seen this paper or these papers, rather, he is speaking about?

Mr. Davidson: I have not seen the papers, no.

The Court: Have you seen his copy?

Mr. Davidson: Yes. We haven't them with us this morning. We will try to get them this afternoon, to the extent that they are available, without the subpoena.

The Court: All right.

Mr. Duffy: I would like to state, your Honor, we have not agreed on a pre-trial order. Each side has prepared a proposed pre-trial order. At the time of the pre-trial conference, Mr. Marx, Chief Counsel for the Government, said he would prepare a draft of a proposed pre-trial order and several months went by with no action and finally, about a week ago, we were presented with a seventeen-page document to which we were asked to agree. We felt a good deal of the matter was irrelevant.

The Court: Proceed with the trial. Do you want to make [2] an opening statement?

Mr. Scott: Does your Honor want an opening statement first?

The Court: No. It is not necessary, as far as I am concerned, unless you wish to make one.

Mr. Scott: This is an action under the Fair Labor Standards Act, alleging a violation of overtime and other provisions of the Fair Labor Standards Act.

The defendant in this case operates a sawmill and planing mill about fifteen miles from Cottage Grove, Oregon. In connection with their mill the defendant has constructed a cookhouse. The issue in this case is whether the cook and kitchen help in the cookhouse are employees of the defendant within the meaning of the Fair Labor Standards Act of 1938.

I do not think there is any dispute over the fact that the cook and kitchen help have not been paid overtime compensation as required by the Fair Labor Standards Act and that they have worked in excess of forty hours per week without receiving such overtime compensation.

I have talked with Mr. Duffy, and the sole issue to be tried in the case is the employee and employer relationship. There is no dispute as to the application of the Act to the cook and kitchen help in the event they are determined to be employees.

Mr. Davidson: I think, your Honor, perhaps a brief statement of the facts might be helpful. The Row River Lumber Company [3] constructed a mill near Dorena in 1939. They do not have a company town and did not have a company town there at the time. They constructed a mill. One Mrs. Thomason, whose husband operated a local store, asked if

she could serve meals and if they would collect for them through the payroll from our employees, and we were glad to do that.

Then, later, Mrs. Thomason became ill and decided she did not want to do it any more and Mrs. Garoutte, her assistant, said she would like to start up herself. She had no equipment. We had an old building there which we completely remodeled and furnished the equipment to her, and she served meals to some of our employees. Some of them had their lunch at Cottage Grove. Very few of them lived there. She also fed some transients.

Mrs. Garoutte was succeeded by Mrs. LeCompte, the present cook, on the same basis. We pay subsidies at so much a meal on her statement that costs have gone up and, rather than have the prices for meals go up, because of the labor situation, we have paid those subsidies.

She buys her own groceries, decides what she shall serve, decides how much she has to have for meals.

Counsel says there is no dispute about overtime if the Act is applicable. We have no knowledge as to the profits made by the operator of this restaurant nor as to the hours that anyone works there. [4]

H. B. BEBE

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

(Testimony of H. B. Bebe.)

Direct Examination

By Mr. Scott:

Q. Your name is H. B. Bebe? A. Yes, sir.

Q. Where are you employed, Mr. Bebe?

A. By the Row River Lumber Company.

Q. In what capacity are you employed by the Row River Lumber Company?

A. Mill superintendent.

Q. The Row River Lumber Company is the defendant in this action? A. Sir?

Q. The Row River Lumber Company is the defendant in this action here?

The Court: Yes.

Q. (By Mr. Scott): How long have you been employed as manager of the Row River Lumber Company?

A. I didn't say manager. I said superintendent.

Q. As superintendent. I beg your pardon.

A. Since 1939.

Q. Since 1939? A. October, to be exact.

Q. Your capacity as superintendent of the Row River Lumber [5] Company, do you have general supervision, general over-all supervision of the operation of the sawmill and the planing mill?

A. Yes, sir.

Q. Where is the approximate location of the sawmill and the planing mill of the Row River Lumber Company in relation to Cottage Grove, Oregon?

A. You mean the distance?

Q. Yes.

A. It is about thirteen miles southeast of Cottage Grove.

(Testimony of H. B. Bebe.)

Q. Would you explain the physical setup of the planing mill and the sawmill of the Row River Lumber Company? Describe the buildings that are situated there.

A. I don't just exactly understand what you mean.

Q. There is a planing mill and a sawmill?

A. Yes, sir.

Q. And a log pond? A. Yes, sir.

Q. And an office? A. Yes.

Q. And a loading dock? A. Yes.

Q. There are some bunkhouses that are owned and operated by the Row River Lumber Company, is that right? A. Yes. [6]

Q. Also, there is a cookhouse that is owned by the Row River Lumber Company?

A. Yes, the building is.

Q. Did the Row River Lumber Company build the cookhouse building? A. Part of it.

Q. Will you explain what you mean by "part of it"? A. Sir?

Q. Will you explain what you mean by "part of it"?

A. Well, the original part was built by somebody that used it to bunk in for a while.

Q. Was that the Row River Lumber Company that used to bunk in for a while?

A. No; that was a private person that brought their own lumber and built it.

Q. Did the Row River Lumber Company buy this bunkhouse from this private person?

A. I couldn't say that.

(Testimony of H. B. Bebe.)

Q. Will you describe what manufacturing activities are performed by the Row River Lumber Company at the sawmill and the planing mill?

A. Well, sawing and planing and loading of lumber, if I understand your question right.

Q. Yes, sir. As I understand it, they are engaged in the production, sale and distribution of both rough green and planed [7] lumber?

A. That is right.

Q. Does the Row River Lumber Company secure its logs from its own stumpage?

A. Couldn't say to that.

Q. You don't know whether the Row River Lumber Company owns the timberlands from which the logs are cut?

A. I couldn't answer that.

Q. What is the location of the logging operations of the Row River Lumber Company from its mill?

A. Oh, it is about seven miles, a little northeast; that is, by road.

Q. Does the Row River Lumber Company use all the logs that it cuts for its own productive use, or does it sell some cedar logs to shingle manufacturers and some peelers to plywood mills?

A. We sell some, yes.

Q. You mean they sell some cedar logs to shingle companies?

A. Yes.

Q. And some peelers to plywood mills?

A. That is right.

Q. Approximately how many persons does the Row River Lumber Company have engaged as employees in its sawmill and its planing mill?

A. Well, it varies a little, but I would say between eighty and eighty-five at the planing mill and the sawmill. [8]

Q. And the sawmill?

A. That is right.

Q. Approximately how many employees does the Row River Lumber Company have at its timber-cutting site?

A. You mean just the cutting, or do you mean logging——

Q. All the woods employees.

A. Well, probably somewhere between fifty and fifty-five.

Q. Approximately how many board feet of lumber are sawed per day by the sawmill of the Row River Lumber Company?

A. Between one hundred and one hundred twenty.

Q. Between 100,000 and 120,000?

A. Yes, board feet.

Q. Does that include lumber that is processed at the planing mill, also, these figures that you just gave?

A. Yes, the lumber that we saw is processed in the planing mill.

Q. That figure you just gave, 100,000 to 120,000, does that include both lumber that is sawed and lumber that is planed?

A. No. That includes all of it. The 100,000 to 120,000 includes all of it.

Q. Includes the whole operation?

A. That includes the whole operation.

Q. At the present time the Row River Lumber

(Testimony of H. B. Bebe.)

Company, you say, owns this cookhouse that is located on property of the company at the mill?

A. Yes, sir.

Q. When did the Row River Lumber Company acquire that cookhouse?

A. Well, I think about 1942, as I remember it.

Q. Do you recall whether it was in October, 1942, when they began operating the cookhouse?

A. No, I couldn't tell you dates, no.

Q. You say that this cookhouse was previously a bunkhouse?

A. As I remember it, somebody built it there to bunk in, in—I don't know—1939 or 1940. I don't remember which it was now. It was before it was fixed over for a cookhouse.

Q. Do you know whether the Row River Lumber Company purchased the cookhouse?

A. Sir?

Q. Do you know whether the Row River Lumber Company purchased the cookhouse?

A. I don't know that. I don't know whether they purchased it or not.

Q. Did the Row River Lumber Company remodel that cookhouse, that bunkhouse, rather?

A. That is right.

Q. For use as a cookhouse? A. Yes, sir.

Q. Since the Row River Lumber Company remodeled the cookhouse in 1942, has the cookhouse been used to feed the employees of [10] the Row River Lumber Company? A. It has.

Q. Would you state what the cookhouse consists

(Testimony of H. B. Bebe.)

of? I mean, state the different rooms that are in the cookhouse.

A. Well, first, there is two bedrooms, a store-room, kitchen and dining room.

Q. The two bedrooms, as I understand, are used as living quarters for the cook, her family and kitchen help? A. That is right.

Q. Do you know whether or not the Row River Lumber Company paid the entire cost of the labor and materials used in the remodeling of the bunkhouse?

A. They did, as far as I know, yes.

Q. Do you know whether the Row River Lumber Company paid the entire cost of equipping the cookhouse? A. Yes, sir, they did.

Q. What did such equipment consist of?

A. Well, consisted of a stove and dishes, cooking utensils.

Q. And a refrigerator? A. Sir?

Q. Did it include a refrigerator?

A. Yes, sir.

Q. Forks, spoons, cups, saucers and dishes and all furniture necessary for use in the kitchen, dining room and living quarters? [11]

A. Yes, sir.

Q. You say you don't know whether the Row River Lumber Company owns this cookhouse?

A. Sir?

Q. You say you don't know whether the Row River Lumber Company owns this cookhouse?

A. I couldn't say to that.

(Testimony of H. B. Bebe.)

Q. Since 1942, when the Row River Lumber Company remodeled the bunkhouse into the cookhouse, how many cooks have served there?

A. Well, do you mean the ones that actually had the running of it or somebody that filled in?

Q. No, I mean permanent.

A. Well, two.

Q. Would you state the names of those two cooks?

A. Mrs. Ida Garoutte and Mrs. LeCompte.

Q. That is Mrs. Edith LeCompte?

A. Yes.

Q. Do you know what period of time Mrs. Garoutte served as cook?

A. As near as I remember, I think it was until about May, 1945.

Q. Since May, 1945, has Mrs. LeCompte been the cook? A. Yes.

Q. She is presently the cook? A. Yes.

Q. Do you know whether Mrs. Garoutte and Mrs. LeCompte had [12] any assistants to help them run the cookhouse?

A. They have always had waiters.

Q. How many waitresses did they have, do you know? A. One is all I have known.

Q. One at a time?

A. One at a time. That is right.

Q. Do you know what the work of a cook consisted of? What did it consist of? Preparation of the meals in the cookhouse? A. I don't know.

Q. You don't know what work was performed?

A. No.

(Testimony of H. B. Bebe.)

Q. Do you know what the activities of the kitchen help consisted of?

A. Well, I suppose they would help get the vegetables ready and set the tables and wait on the tables.

Q. Who selects the waitress or the helper in the kitchen?

A. The cook.

Q. Who pays the waitress or the helper in the kitchen?

A. The lady that runs the cookhouse.

Q. Does the cook keep a record of the number of meals that she serves?

A. Surely.

Q. Does she keep that on a monthly basis?

A. That I don't know, but I presume she would.

Q. At the end of each month the cook submits a list of the [13] meals eaten by company employees to the company mill office, is that right?

A. Yes, they come to the Portland office.

Q. Aren't they submitted first to the mill office?

A. That is right.

Q. Then the mill office sends them down to the Portland office?

A. That is right, yes.

Q. Immediately? The mill office sends the list of the meals eaten down to the Portland office with the regular monthly payroll?

A. Yes.

Q. What method is used by the Row River Lumber Company to pay the cook?

A. What do you mean, by check or cash?

Q. No. I mean, does the Row River Lumber Company pay the cook a salary or do they pay her on an hourly rate or how do they pay the cook?

(Testimony of H. B. Bebe.)

A. They pay her whatever the tickets call for. They get so much a meal and that is deducted from the men's wages.

Q. In other words, the cook is paid an agreed price per meal by the Row River Lumber Company? A. She is what?

Q. The cook is paid an agreed price per meal by the Row River Lumber Company?

A. Well, I don't know just exactly—I don't just exactly [14] understand that.

Q. There is a certain set price that the cook is paid for each meal that she serves?

A. That is right, yes.

Q. That price is a set price per meal?

A. Yes.

Q. Is the price per meal deducted from the employees' wages or does the Row River Lumber Company pay the full price of the meal?

A. It is deducted from the employee's wages.

Q. In addition to the amount that is deducted from the employee's wages, doesn't the Row River Lumber Company pay a subsidy to the cook?

A. Yes, sir.

Mr. Scott: At this time, your Honor, I would like to introduce into evidence plaintiff's interrogatories and defendant's answers to the interrogatories and have them marked Exhibits No. 1 and No. 2, please, sir. I offer those in evidence as Plaintiff's Exhibits No. 1 and No. 2.

The Court: They are admitted.

(Testimony of H. B. Bebe.)

(Plaintiff's Interrogatories and Defendant's Answers to Plaintiff's Interrogatories thereupon received in evidence and marked Plaintiff's Exhibit No. 1 and Plaintiff's Exhibit No. 2, respectively.) [15]

PLAINTIFF'S EXHIBIT No. 1

In the District Court of the United States

For the District of Oregon

Civil Action File No. 3917

WILLIAM R. McCOMB, Administrator of the
Wage and Hour Division, United States Department of Labor,

Plaintiff,

vs.

ROW RIVER LUMBER COMPANY,
a corporation,

Defendant.

INTERROGATORIES

William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, pursuant to Rule 33, Federal Rules of Civil Procedure, hereby serves upon Row River Lumber Company, defendant, the following interrogatories to be answered separately and fully in writing, under oath, by any officer or officers of defendant competent to testify in its behalf:

I.

What was the total dollar volume of sales by defendant for the period from January 1, 1947 to

(Testimony of H. B. Bebe.)

November 30, 1947 of lumber and other wood products by it at its sawmill and planing mill located near Dorena, Oregon?

II.

What was the total dollar volume of sales of such lumber and other wood products referred to above shipped by the defendant or on its behalf from points within the State of Oregon to points outside said State during the period from January 1, 1947 to November 30, 1947?

III.

Does the defendant own the land and building situated at or near the site of its said sawmill and planing mill, used as a cookhouse and place to feed persons employed by it in its said sawmill and planing mill?

IV.

If the defendant now owns, or formerly owned, the land and building mentioned in Paragraph III hereof, when did it purchase or otherwise acquire said land?

V.

Did the defendant purchase or otherwise acquire the land referred to in Paragraph III for the purpose of constructing the cookhouse or feeding place referred to in said paragraph?

VI.

Is the defendant now the owner of the land and cookhouse or feeding place referred to in Paragraph III? If it is not, when did it sell the land and buildings thereon and to whom and for what price?

(Testimony of H. B. Bebe.)

VII.

Did the defendant construct or cause to be constructed the cookhouse or feeding place referred to in Paragraph III, and, if so, when did such construction take place?

VIII.

What was the cost to the defendant of such construction referred to in Paragraph VII, hereof?

IX.

What were the total taxes on the land and cookhouse building or feeding place referred to in Paragraph III hereof during the year 1946, and has the defendant paid such taxes for said year?

X.

Did the defendant furnish and equip the cookhouse building or feeding place referred to in Paragraph III hereof, and, if so, what was the cost to the defendant of such furnishings and equipment, including but not limited to furnishings and equipment for the kitchen, dining room, and living quarters of the cook and kitchen help?

XI.

Did the furnishings and equipment mentioned in Paragraph X hereof include pots, pans, knives, forks, spoons, plates, cups, saucers, dishes or any other implements used for dining or feeding purposes, and, if so, which of such items were furnished?

XII.

Since the time when the defendant first supplied any of the furnishings and equipment set forth in

(Testimony of H. B. Bebe.)

Paragraph X hereof, has it furnished any replacements for any of the items so furnished?

XIII.

Has it been the practice of the defendant since it first supplied the furnishings and equipment referred to in Paragraph X hereof to replace or repair any of such furnishings or equipment when they become unsuitable for use, and, if so, what and when were the last replacements or repairs made?

XIV.

What was the total cost to the defendant for the years 1946 and 1947, respectively, of the replacements and repairs referred to in Paragraph XIII hereof?

XV.

Since the original construction of the cookhouse or feeding place referred to in Paragraph III hereof, has the defendant made, or caused to be made, any additions thereto or alterations or repairs therein, and, if so, when were such additions, alterations or repairs made, and what did they consist of?

XVI.

What was the total cost to the defendant for the years 1946 and 1947, respectively, of any additions, alterations or repairs referred to in Paragraph XV hereof, specifying the aggregate cost separately for additions, alterations or repairs?

XVII.

During the period since the construction of the cookhouse or feeding place referred to in Paragraph

(Testimony of H. B. Bebe.)

III hereof, has the defendant paid for or defrayed the cost of the water, gas, electricity and fuel used in the operation of the cookhouse or feeding place? If so, state the annual cost to the defendant for the years 1946 and 1947, respectively, of such water, gas, electricity and fuel, specifying the cost for each category separately.

XVIII.

Does the defendant furnish lodging to the cook or any other help employed in the cookhouse or feeding place referred to above, and, if so, does the defendant receive payment in money from persons to whom it furnishes such lodging?

XIX.

At what total sum does the defendant fix or estimate the value for 1947 of the lodging of each cook or helper referred to in Paragraph XVIII hereof?

XX.

For each month during the period from January 1, 1947 to November 30, 1947, what was the total number of meals (including lunches prepared for consumption off the premises) served at the cookhouse or feeding place referred to in Paragraph III to (a) defendant's employees employed in its said sawmill and planing mill and in its logging operation; (b) contractors with defendant and such contractors' employees; (c) transient persons; and (d) any other persons, specifying separately for each of the categories the number of meals so served.

XXI.

How much was charged per meal to the persons

(Testimony of H. B. Bebe.)

mentioned in each of the categories (a) through (d) set forth in Paragraph XX hereof?

XXII.

Aside from sums deducted for meals by defendant from wages paid its employees, did the defendant, during the period from the time the construction of the said cookhouse or feeding place was completed to the date hereof, pay to any persons any sums for or on account of any meals served to persons mentioned in categories (a) through (d) of Paragraph XX hereof, and, if so, how much per meal was paid and to whom was such payment made, specifying the amount separately for each of such categories. If the price per meal so paid by the defendant varied during such period, set forth each variation in the price and the period during which such price was in effect.

XXIII.

For each month in the years 1943, 1944, 1945, 1946 and 1947 what was the total amount paid by the defendant to the person or persons it claims to have operated the said cookhouse or feeding place for or on account of each of the following: (a) sums deducted by the defendant from the wages of its employees in payment of meals served to such employees during each such month; (b) in addition to sums so deducted, any other moneys for or on account of payment for meals served to such employees during each such month; and (c) any sums paid for or on account of meals served to persons who were not defendant's employees.

(Testimony of H. B. Bebe.)

XXIV.

For each month during the period from January 1, 1947 through November 30, 1947, how many persons were employed by the defendant in and about its said sawmill and planing mill and in its logging operations?

XXV.

For each month during the period from January 1, 1947 through November 30, 1947 what was the number of the defendant's employees referred to in Paragraph XXIV hereof who had one or more meals per day (including lunches prepared for consumption away from the premises) at the said cookhouse or feeding place?

Dated December 29, 1947.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ HERMAN MARX,
Regional Attorney.

/s/ JAMES F. SCOTT,
Attorney.

United States Department of Labor, Attorneys for
Plaintiff.

Service of a copy of the foregoing is acknowledged
this 2nd day of January, 1948.

/s/ CARL E. DAVIDSON,
Attorney for Defendant.

[Endorsed]: Filed January 2, 1948.

(Testimony of H. B. Bebe.)

PLAINTIFF'S EXHIBIT No. 2

In the District Court of the United States
for the District of Oregon

Civil No. 3917

[Title of Cause.]

ANSWERS TO WRITTEN
INTERROGATORIES

Comes now defendant and answers the written interrogatories submitted by plaintiff as follows:

1. \$1,421,199.89.
2. \$1,185,154.62.
3. Yes.
4. December 26, 1939.
5. No.
6. Yes.

7. Converted old bunkhouse to a cookhouse during the months of September, October, November and December, 1942.

8. \$1,923.88.

9. The tax assessment was made on the whole mill property with no segregation as to the land and cookhouse building.

10. (a) Yes. (b) \$72.93.

11. (a) Yes. (b) All items.

12. Yes.

13. (a) Yes. (b) Linoleum work on September 3, 1947.

14. (a) 1946—\$129.34. (b) 1947—\$887.87 (including refrigerator replaced at a cost of \$797.92).

(Testimony of H. B. Bebe.)

15. (a) Yes. (b) During August and September of 1946 the ventilation was improved and a wing was added for the cookhouse helper.

16. (a) 1946—Additions \$416.95; repairs \$312.33.

(b) 1947—None.

17. (a) Yes.

(b)	1946	1947
Water	\$ 16.01	\$ 83.19
Electricity	225.78	164.42
Fuel	137.50	100.50
	<hr/>	<hr/>
	\$379.29	\$348.11

18. (a) Yes. (b) No.

19. Cook \$360.00; helper \$120.00.

20.	Company Employees	Contractor's Employees	Total
1947			
January	2204	17	2221
February	1912	34	1946
March	1880	120	2000
April	1964	32	1996
May	1891	156	2047
June	1581	95	1676
July	1429	17	1446
August	1267	1267
September	1100	1100
October	1162	27	1189
November	1066	10	1076
	<hr/>	<hr/>	<hr/>
	17456	508	17964

21. Fifty cents per meal to and including September 9, 1947; sixty cents per meal from September 10, 1947, to date.

(Testimony of H. B. Bebe.)

22.

	Employee Paid	Co. Subsidy	Net to Cook
Mrs. Thomason August 1940	.40	.10	.50
Mrs. Gaurotte October 16, 1942	.40	.10	.50
Mrs. LeCompte May, 1945	.40	.15	.55
August, 1946	.50	.15	.65
September, 1947	.60	.15	.75

Mrs. Thomason operated a General Store near the mill site and served meals in connection therewith. Her establishment was not large enough to accommodate the patrons so Row River Lbr. Co. remodelled a bunkhouse which they owned and was situated near her store. Mrs. Thomason continued as cook until October 16, 1942.

23.	1943	1944	1945	1946	1947
January	\$ 422.58	\$ 430.60	\$ 873.00	\$ 926.15	\$1,443.65
February	337.50	520.00	857.30	829.05	1,264.90
March	339.50	625.70	1,056.00	1,027.55	1,300.00
April	344.50	494.50	975.00	705.80	1,297.40
May	349.50	867.50	916.82	1,139.00	1,330.55
June	357.50	823.50	1,132.68	1,232.35	1,089.40
July	281.50	541.50	956.50	1,019.10	939.90
August	333.50	904.50	970.20	1,334.95	823.55
September	449.00	807.50	959.94	1,210.30	792.50
October	358.00	968.00	598.95	1,242.80	891.75
November	284.00	957.50	974.27	1,158.30	807.00
December	436.50	676.00	609.00	1,065.35	927.75
	4,293.58	\$8,616.80	\$10,879.66	\$12,890.70	\$12,908.35

(Testimony of H. B. Bebe.)

	24.	25.
January	168	59
February	170	69
March	166	46
April	172	60
May	191	73
June	163	56
July	158	51
August	156	45
September	169	43
October	160	40
November	163	40
December	---	---

Dated this 17th day of January, 1948.

/s/ EDMUND HAYES,
President, Row River Lumber Company.

State of Oregon,
County of Multnomah—ss.

I, Edmund Hayes, being first duly sworn, depose and say:

That I am the president of Row River Lumber Company, the defendant within named; that I have read the foregoing answers to the written interrogatories submitted by plaintiff, know the facts stated therein, and that the same are true as I verily believe.

/s/ EDMUND HAYES.

Subscribed and sworn to before me this 16th day of January, 1948.

(Seal) /s/ M. C. JOHNSON,
Notary Public for Oregon.

My commission expires March 12, 1948.

(Testimony of H. B. Bebe.)

Service of the foregoing answers is hereby acknowledged this 19th day of January, 1948.

/s/ FLOYD D. HAMILTON,
Of Attorneys for Plaintiff.

[Endorsed]: Filed January 19, 1948.

Q. (By Mr. Scott): I hand you Plaintiff's Exhibit No. 2, which is the defendant's answers to plaintiff's interrogatories, and ask you to look at Answer No. 12 on Page 3—Answer No. 22 on Page 3. I beg your pardon. A. 22, yes.

Q. You will note that the answer to Interrogatory No. 22 shows that from October 16, 1942, until May, 1945, when Mrs. Garoutte was the cook, that she was paid 50 cents per meal. Is that correct?

A. Until May, 1945?

Q. Yes, sir. A. Yes.

Q. Of that 50 cents it shows that 40 cents was deducted by the Row River Lumber Company from the wages due the employees of the company. Is that correct? A. Well, I would say yes.

Q. And it also shows during that period the company added a 10-cent subsidy per meal which was paid to the cook. Is that correct? A. Yes, sir.

Q. Also, it shows from May, 1945, to August, 1946, when Mrs. LeCompte was the cook, that a total of 55 cents per meal was paid to her?

A. Yes.

Q. Consisting of 40 cents deducted from the wages due the [16] employees of the Row River

(Testimony of H. B. Bebe.)

Lumber Company and a 15-cent subsidy paid to the cook by the Row River Lumber Company from funds of the Row River Lumber Company. Is that correct? A. Yes.

Q. And from August, 1946, to September, 1947, it shows that the cook was paid a total of 65 cents per meal consisting of 50 cents deducted by the Row River Lumber Company from the wages due its employees and 15 cents as a subsidy paid by the Row River Lumber Company to the cook from the company's funds. Is that correct?

A. Yes.

Mr. Davidson: I do not know how far this is going but, as I understand, the questions are put to the witness as to what certain documents show, not as to the witness' knowledge whether those are the facts or not. I think it is entirely irrelevant.

Mr. Scott: I am just asking him to explain.

The Court: Go ahead.

Mr. Scott: Beg your pardon?

The Court: Go ahead. Hurry it up.

Q. (By Mr. Scott): Since September, 1947, the cook has been paid 75 cents per meal, consisting of 60 cents deducted from the employees' wages and a 15-cent subsidy paid by the Row River Lumber Company from its own funds. Is that correct?

A. Yes, sir. [17]

Q. When an employee of the Row River Lumber Company eats at the cookhouse, the cook makes a record of that meal, is that correct?

A. Yes, sir.

(Testimony of H. B. Bebe.)

Q. If the employee so chooses, could he pay, directly to the cook in cash, the amount of money that would be deducted from his wages for that meal?

A. Well, it would be rather difficult to keep track of the subsidy that way.

Q. I just asked you: May an employee pay cash, proportionate cash for his meals that would be deducted?

A. That is something that has never come up, so I couldn't answer as to that.

Q. If the Row River Lumber Company were unable to make the proportionate deductions for the total amount of meals from employees' wages, nevertheless, would the Row River Lumber Company still pay the subsidy to the cook for the meals eaten by those employees?

A. I wish you would state that again, please.

Q. If the Row River Lumber Company is unable to make deduction from an employee's wages for meals eaten by the employee at the cookhouse, does the Row River Lumber Company, nevertheless, pay the cook a subsidy for those meals?

A. I would say no.

Q. I hand you a series of looseleaf pieces of paper entitled [18] "Statement—Row River Lumber Company, 823 Terminal Sales Building, Portland, Oregon," showing the name of Mrs. Ida Garoute, and her address, showing so many meals at a certain price and so many other meals at a certain

(Testimony of H. B. Bebe.)

price and so many other meals at a certain price. I will ask you to identify those pieces of paper.

The Court: Can't you stipulate on all of this?

Mr. Davidson: We could stipulate. I don't think Mr. Bebe could answer those questions.

The Court: Take them to Mr. Davidson, Mr. Bailiff. They are going to stipulate on these I think.

Mr. Davidson: We are willing to stipulate that plaintiff's Identification No. 3 consists of a group of statements, showing indebtedness of the Row River Lumber Company to Mrs. Garoutte for certain meals at a certain price or certain prices and certain amounts of so-called bonuses, and that Exhibit Identification No. 4 consists of similar statements entered by Mrs. Edith LeCompte. Does that cover it?

Mr. Scott: Yes. I would like to ask one thing, though.

Q. Were those prepared by Mrs. LeCompte and Mrs. Garrouette and given to the Row River Lumber Company, or were they prepared by the Row River Lumber Company and given back to the cook? It is my understanding that those were prepared by the Row River Lumber Company and sent back to the cook at the time that her check was sent to her.

Mr. Davidson: Maybe one of the bookkeepers will be able to tell.

Mr. Scott: We will ask Mrs. LeCompte.

Q. I hand you as part of Plaintiff's Identification No. 3 a slip of paper—two slips of paper, one with the number 4894, addressed to Mrs. Ida Gar-

(Testimony of H. B. Bebe.)

outte, dated March 13, 1945, and another with the number 4924, addressed to Mrs. Garoutte, dated April 12, 1945.

I call your attention to certain writings on the one dated March 13, 1945. I believe that is No. 4894. Do you find that number? A. Yes.

Q. It says: "Mrs. Garoutte: We could not collect from Douglas Burrell (\$10) and William Renninger (\$41.20). Will you please collect it from the men down there?"

However, the statement shows that Mrs. Garoutte was paid for 128 meals served to Burrell and Renninger at a bonus of 10 cents by the company. Is that correct?

A. I couldn't say. I don't know. I don't know whether that was the case or not. I don't just exactly understand what this is all about here. Were these people working for the company?

Q. Burrell and Renninger? A. Yes.

The Court: Talk up. [20]

The Clerk: Speak louder so the Reporter can hear you.

Q. (By Mr. Scott): I don't know whether they were working for the company or not. Apparently they were, yes.

A. Well, I don't know anything about those.

Q. On Statement No. 4924 it states "We were unable to collect 105 meals at 40 cents—\$42—from William Renninger. Will you please collect it from him down there?"

However, the statement also shows that Mrs. Garoutte was paid by the Row River Lumber Company a bonus of 10 cents per meal for 105 meals

(Testimony of H. B. Bebe.)

with the entry "Bonus on Renninger."

Do you still say if the Row River Lumber Company was unable to make a payroll deduction the company nevertheless did not pay the amount of the bonus to the cook?

A. If the man is not employed by the Row River Lumber Company, they don't pay any bonus.

Q. I don't mean that. If an employee is employed by the Row River Lumber Company, but the Row River Lumber Company for some season, such as shown on these two statements, is unable to make payroll deductions from the employee's wages, nevertheless does not the Row River Lumber Company still pay the amount of the bonus for those meals to the cook?

A. I wouldn't know that.

Q. Don't you have some idea or opinion on that question from reading these two statements?

A. I don't understand the circumstances of these two people. [21] I don't see why, if these are employees of the Row River Lumber Company, they could not deduct the full amount of the 60 cents or whatever it may be.

Q. Statement No. 4924 of this exhibit contains the note: "We were unable to collect 105 meals at 40 cents—\$42—from William Renninger" which would amount to \$22.20 due the cook from the company. It also shows that the cook was, nevertheless, paid for 105 meals at 10 cents a meal, amounting to \$10.50 by the company, as a company subsidy for those meals. Isn't that right?

A. Well, that is what the paper shows, but I don't understand—I don't know the circumstances of it.

(Testimony of H. B. Bebe.)

Q. But the paper does show that?

A. It probably does.

Q. Statement No. 4894 also shows 128 meals for which the company was not able to make a payroll deduction; nevertheless, a 10-cent subsidy was paid to the cook by the Row River Lumber Company?

A. I don't know the circumstances of this, either. I don't know what the circumstances were.

Q. I am just asking you if that is not what the statement shows?

A. That is what the statement shows, but there might be something else in between that and——

Q. Do you have any idea what the circumstances are? [22]

A. No. The man might have been sick or something that he didn't work, or something like that and didn't have anything coming for that month. I don't know.

Q. I ask you to look at Plaintiff's Identification No. 4, which is a group of statements, and particularly to No. 224 addressed to Mrs. Edith LeCompte, dated February 12, 1946, which shows that 1,584 meals were paid to her at a price of 40 cents while only 712—1,712, rather—were paid to her at a price of 15 cents as a bonus or subsidy. I will ask you why more meals were paid for at the subsidy than for which deduction was made?

Let me ask you this: Is not the explanation for that discrepancy the fact that an employee may, if he so chooses, pay the amount to the cook in cash, the amount of the deduction, but the company

(Testimony of H. B. Bebe.)

will nevertheless pay the subsidy to the cook for those meals?

A. I couldn't answer to that. I don't know how this came about at all.

Q. Since the Row River Lumber Company remodeled this bunkhouse into this cookhouse in 1942, and since the cook has been preparing the meals in the cookhouse, does the cook pay the Row River Lumber Company any rent for the cookhouse?

A. No, sir.

Q. In other words, the defendant furnishes to the cook, free of charge, the cookhouse, which consists of a kitchen, dining [23] room and living quarters for the cook, her family and the kitchen help. Is that correct? A. Yes.

Q. Does the Row River Lumber Company also furnish free of charge—

The Court: Don't cover things that are admitted in the interrogatories. There is no point to that. Those things are all admitted in the answers to the interrogatories, aren't they? Aren't they admitted?

Mr. Davidson: I think they are, yes.

Mr. Scott: I don't think so, your Honor. We had it in our pre-trial order, proposed pre-trial order.

Mr. Davidson: It is in our pre-trial order, too.

The Court: Look at the interrogatories and the answers. The pre-trial order has nothing to do with it.

Mr. Scott: I do not think it is stated in the interrogatories, your Honor.

(Testimony of H. B. Bebe.)

The Court: Let me have the interrogatories, Mr. Clerk. "Did the defendant furnish and equip the cookhouse building or feeding place referred to in Paragraph III hereof and, if so, what was the cost to the defendant of such furnishings and equipment . . . "

Mr. Scott: I wanted to ask the witness if the cooks themselves paid any expenses in the equipping of the cookhouse. I know the interrogatories or the answers to the interrogatories [24] state that the defendant paid something for the equipment of the cookhouse but I don't know whether the cooks themselves paid anything in addition.

The Court: All right.

Mr. Scott: I beg your pardon?

The Court: How about that, Mr. Witness? You know what he is asking about.

A. The cook pays nothing towards the maintenance or equipping of the cookhouse.

Q. (By Mr. Scott): The Row River Lumber Company furnishes all kitchen and dining room equipment? A. Correct.

Q. Does the Row River Lumber Company also furnish all equipment for living quarters of the cook and her family and the kitchen help?

A. No, not all of them.

Q. Does the Row River Lumber Company furnish a part of the furnishings and equipment for the living quarters used by the cook and her family and the kitchen help?

(Testimony of H. B. Bebe.)

A. No, I don't think so; only light and heating is all.

Q. Does the Row River Lumber Company furnish all of the light, water and fuel?

A. Yes, sir.

Q. Then, I was going to ask you: Do they furnish all the light, water and fuel necessary for the operation of the [25] cookhouse? A. Yes, sir.

Q. Does the Row River Lumber Company, at its own expense and without any charge to the cook, make all necessary repairs, alterations and additions to the cookhouse? A. Yes.

Q. Does the Row River Lumber Company, without any charge to the cook, make all necessary replacements or repairs of equipment in the cookhouse? A. Yes, sir.

Q. In other words, the cook is not charged anything whatsoever for the use, maintenance or operation of the cookhouse, nor does the cook pay any of her own money for use, maintenance and operation of the cookhouse? I am talking about the structure itself. Is that correct? A. That is right.

Q. Do you know the approximate size of the plot of ground on which the sawmill and planing mill and cookhouse of the Row River Lumber Company are located? A. About thirty-five acres.

Q. Does a hard-surface County highway run through the plot of land?

A. No, not through it; only just one little corner down where the Cookhouse is. That is part

(Testimony of H. B. Bebe.)

of it, the north and south end; the road goes through it, and the rest of it is [26] up to the river bank.

Q. On the east side of the highway that runs through the plot of land are located the sawmill, the planing mill, the office and the mill pond, as well as the loading dock and railroad tracks, is that right? A. That is right.

Q. On the west side of the highway is located the cookhouse? A. Yes, sir.

Q. Is the cookhouse located approximately directly across the highway from the sawmill building? A. No, it is not.

Q. How far from the office of the company is the cookhouse? A. Oh, about 300 feet.

Q. How far from the sawmill and planning mill is the cookhouse? A. Oh, probably 150 feet.

Q. Also, on the west side of the highway, does the Row River Lumber Company own bunkhouses?

A. Yes, sir.

Q. How many bunkhouses do they own at the present time? A. One.

Q. The structure of the bunkhouse and the land on which the bunkhouse is located are owned by the Row River Lumber Company? A. Yes, sir.

Q. Previously, did the Row River Lumber Company operate more than this one bunkhouse? [27]

A. Yes, sir.

Q. How many bunkhouses did the Row River Lumber Company operate? A. Two.

Q. What? A. Two.

(Testimony of H. B. Bebe.)

Q. Was that other bunkhouse located on land owned by the Row River Lumber Company?

A. No, sir.

Q. Is the land on which the cookhouse is located owned by the Row River Lumber Company?

A. Yes, sir.

Q. But you don't know whether the Row River Lumber Company owns the building?

A. No, I couldn't say. I don't know whether there is any compensation or any exchange to the person that built it, but the person that built it built it on company land to use for a short time.

Mr. Scott: Is the cookhouse owned, the building, by the Row River Lumber Company?

Mr. Davidson: Yes, that is right. It is on their land and they own it.

Mr. Scott: At the present time, and since 1942 when the bunkhouse was remodeled into the cookhouse, the Row River Lumber Company has owned the land and the building, is that [28] right?

Mr. Davidson: The cookhouse, yes.

Mr. Scott: The company owns both the land and the building?

Mr. Davidson: That is right.

Q. (By Mr. Scott): The present bunkhouse owned and operated by the Row River Lumber Company and the bunkhouse formerly operated by the Row River Lumber Company, were they maintained by the Row River Lumber Company to furnish lodging to its employees?

A. You mean at the present time?

(Testimony of H. B. Bebe.)

Q. Yes.

A. Yes. We are only operating one.

Q. Yes, I see. I will ask you this, then: At the present time you are operating the bunkhouse to furnish lodging to employees of the Row River Lumber Company? A. Yes, sir.

Q. The other bunkhouse that you previously operated, during the time that you operated it, was that for the purpose of furnishing lodging to employees of the Row River Lumber Company?

A. Yes, sir.

Q. As superintendent of the Row River Lumber Company, do your over-all supervisory duties include the sawmill, the planing mill, and the bunkhouse and cookhouse? A. Yes, sir.

Q. Do you know whether there is any segregation between the structure constituting the cookhouse, the land upon which the [29] cookhouse is located and the rest of the mill for taxation purposes? A. I don't know that, no.

Q. What is the nearest town to the sawmill and planing mill of the Row River Lumber Company?

A. Cottage Grove.

Q. And you said Cottage Grove is how far?

A. About thirteen miles, between thirteen and fourteen.

Q. Do you know the population or the approximate population of Cottage Grove?

A. I do not.

Q. Would you say it is approximately 2,000?

A. Yes. I think a little more.

(Testimony of H. B. Bebe.)

Q. 2,500?

A. Probably. I would have no way to guess at it.

Q. Between 2,000 and 2,500?

A. I would think something like that.

Q. What is the nearest public eating place to the mills of the Row River Lumber Company?

A. Well, I don't know what there is over where the Dorena Dam is being built. I don't know whether there is any public eating place there, but Cottage Grove would be the nearest that I would know of.

Q. Do you know anything about the "Y" cafe?

A. Not too much. The only thing I know is that I understand [30] it is only open from 2:00 in the afternoon until some time in the night.

Q. Do you know how far the "Y" cafe is from the mills of the Row River Lumber Company?

A. About eight miles.

Q. Do you know the approximate number of customers that the "Y" cafe can serve?

A. I do not.

Q. Is it your statement, then, that other than the public eating places in Cottage Grove there is no other public eating place available for the employees of the Row River Lumber Company?

A. Yes, sir, that is right.

Q. Since the cookhouse of the Row River Lumber Company was originally opened or started in 1942, have there been periods of repairs and alterations and additions to the cookhouse?

(Testimony of H. B. Bebe.)

A. Yes, there has been some, yes.

Q. Has the cookhouse remained open during all those periods of repairs, alterations or additions?

A. Yes, sir.

Q. Also, since the cookhouse was remodeled, have there been times when there have been replacements or repairs of equipment in the cookhouse?

A. No.

Q. There have never been any replacements or repairs of equipment [31] in the cookhouse?

A. There has been some in equipment such as dishes and some things like that, yes.

Q. But during those times that there were replacements or repairs of equipment, the cookhouse remained open? A. Yes, sir.

Q. Is it true the employees who live in the bunkhouse, or bunkhouses, in the past, of the Row River Lumber Company, eat all or practically all their meals at the cookhouse? A. Yes.

Q. The cookhouse of the Row River Lumber Company? A. Yes.

Q. In addition to those bunkhouse employees, don't other employees who eat their morning and evening meals in their homes, nevertheless, eat their noon meal at the cookhouse of the Row River Lumber Company? A. Yes, sir.

Q. Approximately how many employees at the present time live in the company's bunkhouse?

A. Six.

Q. When the company operated the other bunk-

(Testimony of H. B. Bebe.)

house, how many employees altogether lived in the two bunkhouses?

A. Oh, from ten to fifteen.

Q. Do you know what means of public transportation is available to employees between the mill and Cottage Grove? [32]

A. You say public transportation?

Q. Yes. A. None.

Q. Does the Row River Lumber Company operate a bus between the mill and Cottage Grove?

A. Yes, sir.

Q. Do some of the employees own automobiles so they can drive between the mill and Cottage Grove?

A. Most of them own them but they don't drive them.

Q. Then, would you say the employees are dependent upon the company bus or private automobiles to travel between the mills and Cottage Grove? A. Yes, sir.

Q. What is the capacity of the company bus?

A. Well, I couldn't say, but I imagine between fifteen and twenty men.

Q. It will carry that many? A. Yes, sir.

Q. What time does the bus leave Cottage Grove in the morning?

A. About 20 minutes to 7, as I remember it.

Q. What time does the bus arrive at the mill?

A. 15 after 7.

Q. What time does the bus leave at night to return to Cottage Grove?

(Testimony of H. B. Bebe.)

A. About 5:35 or 4:35. [33]

Q. About what time does it arrive at Cottage Grove?
A. Oh, a little after 5.

Q. How much after 5?

A. I wouldn't say that. It depends on the roads and your traffic and so on.

Q. Who drives that bus for the company?

A. Henry Arp.

Q. Isn't Mr. Arp an employee of the company who, during daytime, works in the mill?

A. Yes, sir.

Q. Don't several of the company employees who eat their lunch at the company cookhouse but who eat their breakfast and their evening meals in their own homes, don't several of them ride between Cottage Grove and the defendant's mill in the defendant's bus?
A. Repeat that.

Q. Don't they ride between Cottage Grove and the company's mill in the company's bus?

A. Yes, sir.

Q. Do you know when breakfast is served in the cookhouse?
A. 6:25.

Q. When is lunch served?

A. At 12:00 noon.

Q. And when is dinner served?

A. At 6:00 o'clock. [34]

Q. When do the sawmill and planing mill begin operations in the morning?
A. At 7:30.

Q. When is the lunch period for planing mill and sawmill employees?
A. Sir?

(Testimony of H. B. Bebe.)

Q. When is the lunch period for the sawmill and planing mill? A. 12:00 to 1:00.

Q. When does work cease at the end of the day in the planing mill and sawmill? A. At 4:30.

Q. When does work begin in the morning at the site of the logging operations? A. Sir?

Q. When does work begin in the morning at the logging operations?

A. I think 8:00 o'clock.

Q. Do you know the lunch period for the logging operations? A. 12:00.

Q. 12:00 to 1:00? A. 12:00 to 12:30.

Q. When does work cease in the woods?

A. 4:30.

Q. Also, does not the Row River Lumber Company operate a small bus between the mill and the logging operations? [35]

A. You say a small bus?

Q. Or a bus?

A. Well, I think they have a pickup that a few of the men can use if they want to go up a little earlier than the bus does. I don't know that. They only run one bus.

Q. The company does run one bus?

A. Yes, that is all.

Q. And that is the bus between the mill and Cottage Grove?

A. No, that is the bus between the mill and the woods, the logging operations.

Q. In order that we do not mix up the record,

(Testimony of H. B. Bebe.)

the company does operate this bus between Cottage Grove and the mill?

A. Not the one for the loggers.

Q. No. I am not talking about the one for the loggers. A. I see. Excuse me.

Q. But the company does operate this bus between Cottage Grove and the mill that is driven by Mr. Arp? A. Yes.

Q. In addition to that, they operate another bus or operate another run between the mill and the logging operations in the woods? A. Yes.

Q. How long does it take to go one way between the mill and the logging operations?

The Court: What does that have to do with this cookhouse? [36]

Mr. Scottt: I am going to show, your Honor, that this is an integrated operation that the Row River Lumber Company operates up there. Every activity that they perform is interdependent; that the operation of this cookhouse is essential to the operation of the mill and the operation of the logging activity.

The Court: Go ahead. You can carry along indefinitely. It depends on how much detail you think would be needed to show what you describe as an integrated operation.

Mr. Scott: I will say most of this is in the proposed pre-trial order.

The Court: I don't care whether it is there or not. It does not bind me. Read the question.

(Question read.)

(Testimony of H. B. Bebe.)

A. I would say it takes about 40 minutes to go up and about 30 or 35 to come down. That is just a guess.

Q. (By Mr. Scott): I will ask you this now: In addition to the operation of the sawmill and planing mill, the Row River Lumber Company does perform its own logging operations?

A. Yes, sir.

Q. What means does the Row River Lumber Company use to pay the cook and kitchen help?

A. Did you say "assistant help?"

Q. I say: What means does the Row River Lumber Company use to pay the cook and kitchen help? Are they on a salary, an [37] hourly wage or what?

A. The cook pays the kitchen help.

Q. The cook pays the kitchen help?

A. Yes, sir.

Q. And the company pays the cook a certain amount per meal? A. Yes, sir.

Q. Does the company buy the food for the cook?

A. No, sir.

Q. Does the cook receive any cash compensation from the Row River Lumber Company other than the difference between the price per meal paid by the company to the cook and the money the company is required to pay—the money the cook, rather, is required to pay for the food and the kitchen help?

A. No, she does not; not to my knowledge.

Q. So far as you know, does the kitchen help receive any money other than as paid by the cook to the kitchen help? A. Not that I know of, no.

(Testimony of H. B. Bebe.)

Q. Do you know how many hours per week the cook works? A. No, sir.

Q. Do you know how many hours per week the kitchen help works? A. I don't know that, no.

Q. Do you know whether the cook and kitchen help are working over 40 hours a week?

A. Well, I wouldn't know that, either, but I would presume the cook would, but I don't know.

Q. You presume the cook works over 40 hours. Do you know whether the cook has been paid overtime compensation for work in excess of 40 hours by the company?

A. That is included in the price she is paid per meal.

Q. She is paid nothing extra as overtime compensation? A. No.

Q. Has the Row River Lumber Company maintained a record of the hours worked per day and per week of the cook and the kitchen help?

A. Not to my knowledge, no.

Q. If the Row River Lumber Company had kept a record of the daily and weekly hours, would you have knowledge of it? A. Possibly not.

Q. Who selected Mr. Garoutte to operate the cookhouse?

A. If my memory is right, I think it was solicited.

Q. I beg your pardon?

A. If my memory is right, I think it was solicited.

(Testimony of H. B. Bebe.)

Q. Mrs. Garoutte solicited it?

A. Yes, if I remember right.

Q. Whom did she talk to?

A. I think she talked to Mr. Hayes.

Q. He told her she could operate the cookhouse?

A. I expect Mr. Hayes did, yes.

Q. Do you know whom Mrs. Le Compte talked to?
A. Yes, sir. [39]

Q. Did she talk to you? A. Yes, sir.

Q. Did you ask Mr. LeCompte to serve as cook, or did she solicit the position?

A. No, I asked her.

Q. How did you happen to select Mrs. LeCompte as a person to ask?

A. Because I knew that she had cooked before and I thought she was possibly available.

Q. You made the agreement on behalf of the Row River Lumber Company? A. Yes.

Q. Between the Row River Lumber Company and Mrs. LeCompte? A. Yes.

Q. Was the agreement written?

A. Was there one made?

Q. I say, was the agreement written?

A. No, sir.

Q. Entirely oral? A. Verbal.

Q. Does the verbal agreement have any definite term which it is to run? A. No, sir.

Q. Could the Row River Lumber Company terminate the agreement at any time? [40]

A. They could, but they would be reasonable about it.

(Testimony of H. B. Bebe.)

Q. What do you mean, that they would be reasonable?

A. Well, if a person was not satisfactory, they would give them a reasonable length of time to get out.

Q. Yes. But if the Row River Lumber Company wanted to, it could terminate the agreement without any notice, isn't that correct? I say, if they wanted to?

A. If they wanted to, but then the Row River Lumber Company isn't made up of that kind of citizens.

Q. Yes, sir. Can the cook terminate the agreement at any time she wants to? A. Yes, sir.

Q. When the agreement was originally made, was there anything said about the manner in which it would be terminated? A. No, sir.

Q. Was anything said about giving any notice about termination of the agreement?

A. No, sir.

Q. Was anything said about being reasonable at the time? A. No, sir.

Q. Have any complaints ever been made to you by the employees concerning the quantity or quality of the meals served at the cookhouse by either Mrs. LeCompte or Mrs. Garoutte?

A. Not to my knowledge, no.

Q. If the cook at the cookhouse were to terminate the agreement, [41] would you want her to give you notice of her intention?

A. I would sure appreciate it, if one would.

(Testimony of H. B. Bebe.)

Q. Would you expect it, under the terms of the agreement? A. Sir?

Q. Would you expect her to give you notice?

A. Well, yes. I would expect her to be fair.

Q. And, similarly, would you expect to be fair to the cook? A. Yes, sir.

Q. Do you recall that any complaint was ever made to you about some lunchboxes?

A. Yes, sir, I do.

Q. Who made those complaints?

A. Some of the boys that carry lunches.

Q. As I understand the situation, Mr. Bebe, employees who work in the woods have lunches prepared for them by the cook to take in the woods, to eat at noon? A. Yes.

Q. About how many lunches are prepared to be taken in the woods?

A. Oh, they vary anywheres from four to sixteen.

Q. What was the nature of these complaints you mentioned a moment ago about lunchboxes?

A. Well, the complaints were that the pails had not been properly washed, as I remember it.

Q. Whose duty was it to wash the pails properly? [42]

A. That I don't know. I don't know whether it would be the cook or the lady that helps.

Q. But it would be either the cook or the kitchen help? A. It would be one or the other.

Q. To wash the pails properly? A. Yes.

Q. What did you do?

(Testimony of H. B. Bebe.)

A. I just went and talked to Mrs. LeCompte about it.

Q. What did you say to Mrs. LeCompte?

A. I just asked her about the lunch pails, that I had a complaint they were not properly washed.

Q. Did you tell her they would have to be washed properly in the future? A. No, sir.

Q. Did you tell her to check up on that matter?

A. Yes, sir.

Q. Did you know that she would check up on the matter and that no further instructions were necessary? A. Yes, sir.

Q. If instructions had been necessary, do you feel you had the authority to give them to her?

A. For what?

Q. If further instructions had been necessary to the cook concerning the lunch pails, would you have felt you had the authority to give her any necessary instructions? [43] A. Yes, sir.

Q. Do you recall any other time when complaints have been made by employees about the quantity or quality of meals?

A. No, I don't. I don't recall any time that there were any other complaints on either one of the cooks.

Q. When were those complaints made about the lunch pails, do you recall?

A. I don't remember. I presume it is somewhere close to a year ago.

Q. If additional complaints are made by employees as to the quantity or quality of the meals,

(Testimony of H. B. Bebe.)

and you thought the complaint was justified, would you go to Mrs. LeCompte and talk to her about the complaint? A. Yes, sir.

Q. Would you give her any instructions you thought necessary to correct the complaint?

A. No. I would tell her what the complaint was and let her use her own judgment.

Q. By that you mean Mrs. LeCompte would know what to do and, therefore, further instructions would not be necessary? A. Yes, sir.

Q. But you do not mean to say, if you thought instructions were necessary, that you would not feel you had the right to give them?

A. Let's have that question again. [44]

Q. If you thought that instructions to Mrs. LeCompte were necessary or appropriate, would you feel you would have the right to give them?

A. Sure.

Q. You say "Sure"? A. Yes.

Q. Would you say Mrs. LeCompte and Mrs. Garoutte are excellent cooks?

A. Well, they are good cooks, yes.

Q. Would you say you feel the Row River Lumber Company has been fortunate in obtaining a cook who does not require instructions and supervision by you as to the operation of the cookhouse?

A. Yes, I think so.

Q. If you had a cook at the cookhouse who did require instructions and supervision by you, would you exercise that supervision and give her the instructions you thought necessary?

(Testimony of H. B. Bebe.)

A. Yes, sir.

Q. Does the cook buy all of her own food?

A. Yes.

Q. Does she pay for it herself?

A. As far as I know, she does.

Q. Does the Row River Lumber Company advance the cook money for the operation of the cookhouse or give her a loan?

A. If they do, I don't know anything about it.

Q. Does the Row River Lumber Company ever buy any groceries for the cook?

A. Not that I know of.

Q. I hand you Plaintiff's Indentification No. 4 and show you the statement dated July 12, 1945, on No. 5016, with that number printed on it, and ask you what the language "Less two sacks potatoes, \$8.02" stands for?

A. Well, that is something I didn't know was on there until you came out to the mill last week. I didn't know anything about this at all until—That is something between the office force and Mrs. LeCompte.

Q. I hand you statement No. 4986, dated June 13, 1945, with the entry "Less two sacks potatoes, \$8.68" and "Draw 6/5/45, \$200," and ask you what those entries mean?

A. Well, I don't know anything about that. I had nothing to do with them.

Q. Does the Row River Lumber Company have what they call a "Draw Day" and "Pay Day"?

A. Yes, sir.

(Testimony of H. B. Bebe.)

Q. When is "Draw Day" and when is "Pay Day"?

A. The 15th is pay day and the 30th is draw day.

Q. Pay day is when they make——

A. That is when you get your statement.

Q. That is when you are regularly paid your wages? A. Sure. [46]

Q. That is when you regularly receive your wages? A. Yes.

Q. What is "Draw Day"?

A. "Draw Day" is the 15th—I mean the 30th. Some may want to draw and some may not.

Q. What?

A. Some might want to draw and some do not. They are solicited. We go around to see them to see what they want to draw.

Q. What do they draw? Do they draw money?

A. Draw checks, yes.

Q. Do they draw on wages that they have earned? A. Yes.

Q. For the past fifteen days? A. Yes, sir.

Q. Could Mrs. LeCompte draw on "Draw Day"?

A. I don't see any reason why she couldn't.

Q. She could draw just the same as any other employee could?

A. She could ask for a draw, I think. It would not have to be "Draw Day" if it was necessary.

Q. What do you mean, it would not have to be "Draw Day"?

A. I—A lot of them draw between times.

(Testimony of H. B. Bebe.)

Q. Could Mrs. LeCompte draw between times if she asked the company? A. I think so.

Q. I hand you a statement, No. 29, dated August 13, 1945, [47] with the entry "Less: R. E. Lafferty & Sons, \$8.20," and ask you to explain that entry.

A. Where is that?

Q. August 13, 1945.

A. Wasn't that the contractor?

Q. I don't know.

A. I don't know either because Lafferty, he didn't do any business with me, but I think the company had land there that he did some work on for them.

Q. I show you Statement No. 96, dated 10/12/45 with the entry "12- 3-lb. jars Spry, \$8.16," and ask you to explain what that entry means?

A. I don't know.

Q. You don't know what any of these entries mean?

A. No, sir, I don't. I had nothing to do with them.

Q. Do you recall the circumstances under which the meals were increased to 75 cents September 9, 1947? A. You say, do I recall it?

Q. Do you recall the circumstances of the meals—Do you recall the reasons why the meals were increased, or the conversation between you and Mrs. LeCompte as to the increase of the price of meals to 75 cents on September 10, 1947?

A. On account of advances in grocery prices.

(Testimony of H. B. Bebe.)

Q. Did Mrs. LeCompte come and ask you to increase the prices?

A. She came and asked me if there could be something done [48] about it, yes.

Q. Do you recall exactly what she said?

A. No, I don't.

Q. Do you recall what you told her?

A. I just told her we would see.

Q. What did you mean when you said, "We will see"? A. What do you mean?

Q. I mean this: You would have to check with somebody else, is that what you mean?

A. Sometimes we have got to have time to think things over. You have got a lot of things to consider in that case. You have got your men and everything. You can't just decide that off the bat.

Q. Mrs. LeCompte could not have increased the price to 75 cents without asking you, is that right?

A. Well, she should not at least.

Q. I wish you would answer me Yes or No.

A. No.

Q. Did you talk to Mr. Hayes then about whether or not meals should be increased to 75 cents? A. I don't remember that.

Q. Did you subsequently tell Mrs.—

A. Sir?

Q. Did you subsequently tell Mrs. LeCompte she could get 75 cents for the meals? [49]

A. That is right.

Q. Do you recall the circumstances or the con-

(Testimony of H. B. Bebe.)

versation when the meals were increased to 65 cents in August, 1945?

A. No, I don't. I don't recall that at all.

Q. That would be August, 1946.

A. No, I don't recall that.

Q. Or when the meals were increased to 65 cents on May 1, 1945, do you recall the circumstances under which the increase was made or any conversation pertaining to the increase?

A. No, I don't remember.

Q. However, every time that these increases were made the company gave its permission to the cook?

A. Yes.

Q. Has the cook always asked the company for an increase in price when prices have been increased, or has the company ever increased the price on its own initiative?

A. I don't remember that. I don't know whether they gave a voluntary advance or not. I couldn't say.

Q. Is it not true that the company voluntarily made an increase itself, without any request of the cook?

A. I wouldn't know.

Q. I think you testified that the cook turns in a list of the meals she serves to the individual employees and that list is sent to the Portland office?

A. Yes, sir. [50]

Q. I think you said, didn't you, at the same time that the list of meals is sent in the monthly payroll also is sent in to the Portland office?

A. Yes, sir.

(Testimony of H. B. Bebe.)

Q. I think you said, didn't you, at the same time that the list of meals is sent in the monthly payroll also is sent in to the Portland office?

A. Yes, sir.

Q. During months that the cook would not make a very great profit or could hardly make any profit at all, does the company guarantee the cook a certain amount of money, or does the company make up any loss that the cook would incur?

A. That is something we would take up when that thing occurred.

Q. But the company would not let the cook take a loss herself, would it?

A. Well, that is something that would have to be done into when the time ever comes, if something like that would happen.

Q. If it turned out the cook was making hardly anything or the cook was losing money, the company would take means to correct the matter, is that right?

A. That is why those raises came about in those different years, to overcome such a possibility as the cook losing money.

Q. Who selects the kitchen help, do you know?

A. The cook. [51]

Q. Do you have anything at all to do with selecting the kitchen help?

A. No, sir.

Q. Do you have anything at all to do about paying the kitchen help?

A. No, sir.

Q. Do you have anything at all to do about the

(Testimony of H. B. Bebe.)

amount of money the cook will pay the kitchen help? A. No.

Q. Do you have anything to do about the hours that the cook and kitchen help will work?

A. No, sir.

Q. You said at the present time, with the one bunkhouse, there are six employees living in the bunkhouse? A. Yes.

Q. And that when you had two bunkhouses, how many employees did you say would live in both?

A. Somewhere between — anywheres between about ten and sixteen.

Q. Yes, sir. Does the Row River Lumber Company maintain the cookhouse and operate the cookhouse with its own employees?

A. How broad do you mean that?

Q. I mean the bunkhouse?

A. The maintenance or what?

Q. I am talking about the person that makes the beds and [52] cleans up the bunkhouse. Is that an employee of the Row River Lumber Company?

A. Yes, it is.

Q. Who hired that employee to take care of the bunkhouse? A. I think Carl Shoberg.

Q. That person is an employee of the Row River Lumber Company that maintains the bunkhouse?

A. Yes.

Q. The person that maintains the bunkhouse is an employee of the Row River Lumber Company?

A. Yes, when she is taking care of the beds, she is.

(Testimony of H. B. Bebe.)

Q. How much are employees charged for use of the bunkhouse? A. \$2.00 a week.

Q. Are those charges paid by the employees through payroll deductions? A. Yes, sir.

Q. The same as the charges for food they eat in the cookhouse is paid through regular payroll deductions? A. Yes, sir.

Q. What is the reason why it is necessary or it was necessary that the Row River Lumber Company construct and equip this cookhouse?

A. Well, for convenience.

Q. Where would the employees be able to eat, if you did not have this cookhouse? [53]

A. Sir?

Q. Where would the employees be able to eat?

A. They would have to eat at home.

Q. What about the employees who live in the bunkhouse? A. They would not have any.

Q. Would not have any?

A. They would not have none, no.

Q. You would have—You would not have a bunkhouse unless you had a cookhouse?

A. We have no cookhouse, either.

Q. However, under the situation as it does exist the employees who do live at the bunkhouse would have no other place to eat except the cookhouse, is that right? A. That is right.

Q. What is the purpose of the Row River Lumber Company constructing and maintaining a bunkhouse?

A. Well, so the men would have a place to sleep.

(Testimony of H. B. Bebe.)

Q. I presume you mean single men, men who do not live with their families, would not have any place to live if it were not for the bunkhouse furnished by the company? A. That is right.

Q. Possibly not so at the present time, but during the last three or four years was it not very vital to the operation of the company that this cookhouse and bunkhouse facility be available for employees? [54]

A. Not any more than it was for the United States Government.

Q. Yes. I realize that. A. All right.

Q. A lot of the production was for war purposes, but I mean this: During the war would the company have been able to operate if it had not been able to furnish employees with bunkhouse and cookhouse facilities?

A. Oh, you can do almost anything when you have to.

Q. What do you mean by that, that during the war you were making a greater effort than you would at other times? A. Yes, sir.

Q. The operation of the bunkhouse is a convenience and an inducement for employees who would have no other place to live to work at the Row River Lumber Company? A. Yes.

Q. And these employees who live at the bunkhouse are dependent upon the company—are dependent upon the cookhouse, I should say, for meals? A. That is right.

(Testimony of H. B. Bebe.)

Q. What is the purpose of the company paying this subsidy on meals?

A. Well, I presume it was to—we are at a little disadvantage in being out where we are, and it was to make it a little more attractive for the employees out there.

Q. By that you mean that the mill is located in a rather [55] isolated place? You mean that the mill is located in a rather isolated place and it is an inducement to the employees who work there to make cheap meals available?

A. I presume that is the idea.

Q. Would you say whether it is or not rather than——

A. I presume so.

Q. Would you say Yes or No whether you presume that to be the reason?

A. Well, I would say Yes.

Q. Also, does not the subsidy act as a certain minimum guarantee to the cook for each meal that she serves?

A. Well, it would not be any different whether the employee paid the 75 cents or the company—whether the employee paid the 60 and the company the 15-cent subsidy.

Q. At the present time the cook is guaranteed 15 cents of the 75 cents by the company, isn't that true?

A. Yes.

Q. So, in effect, the company is guaranteeing her 20 per cent of the cost of the meal; she can rely on that and be sure that she will get it?

(Testimony of H. B. Bebe.)

A. She is getting 100 per cent. When the employee eats there, the cook gets that.

Q. You said you had the over-all supervisory responsibility of the mill and cookhouse. Are you Mrs. LeCompte's supervisor, too? [56]

A. No, sir.

Q. Do you visit the cookhouse regularly?

A. No, sir.

Q. Do you eat meals in the cookhouse?

A. Sometimes.

Q. Do you eat at least one meal a week in the cookhouse?

A. Yes, it will probably average that.

Q. Do you visit the cookhouse on other occasions, other than when you go there to eat a meal?

A. Sometimes, yes.

Q. What are the other occasions when you visit the cookhouse?

A. Well, sometimes when her icebox or something goes wrong with it or some other things that need looking after, some leaks in the water system and so on.

Q. You would go over there and see what is to be done? A. Yes.

Q. To put it in proper working order?

A. Yes.

Q. Do you ever go over to the cookhouse for the purpose of inspecting the cookhouse to see if it is being maintained properly? A. No, sir.

Q. When you go over there to eat meals, do you make it a point to observe the condition of the cook-

(Testimony of H. B. Bebe.)

house and to see how things are being operated there? [57] A. Yes, sir.

Q. When an increase has been given in the price per meal, what were the considerations, or what was the basis on which the new price was fixed?

A. I don't understand that.

Q. When prices of meals are set, are they set in an amount which the company figures will enable to cook to pay for the food and for the help and make something of a profit for herself? Is that the basis on which the meals are set, the prices of the meals? A. I presume it was.

Q. With the company setting the amount the cook can charge for a meal, that restricts the amount that the cook can make out of the operation of the cookhouse, doesn't it?

A. The company has nothing to do with transient prices at all. The cook sets her prices on transients.

Q. How much transient trade is there at the cookhouse, if any? A. Sir?

Q. How much transient trade is there at the cookhouse? Isn't that negligible?

A. Is that what?

Q. I said, there is very little transient trade at the cookhouse?

A. Sometimes there is quite a little bit.

Q. The cook certainly could not operate the cookhouse for the transient trade, could she? [58]

A. No, not—You could not.

(Testimony of H. B. Bebe.)

Q. Would the transient trade amount to more than \$10 a month?

A. Well, I couldn't say to that. Sometimes it is likely to; sometimes the company boarders——

Q. The cook is primarily or practically totally dependent upon the meals served to the employees for her ability to run the cookhouse, isn't that true?

A. Yes.

Q. I will ask you this question again: By setting the maximum amount that the cook may charge a company employee for eating at the cookhouse, doesn't the company limit the amount of profit the cook is going to be able to make?

A. That is why these meals have been raised from time to time.

Q. Yes, I realize it has been necessary to raise the price of meals. A. Realize what?

Q. I realize it has been necessary to raise the prices of meals. A. Yes.

Q. In order to enable the cook to make a profit?

A. Yes.

Q. But I am not saying that. What I am saying is this: The amount of profit at the present time that the cook can make is limited by the fact that she cannot charge more than 75 cents a meal to the company employees, isn't that true? [59]

A. Well, I presume it is.

Q. Are there any particular types of meals served at the cookhouse? A. No.

Q. Is there any particular menu that the company asks the cook to serve at the cookhouse?

A. No, she is free to——

(Testimony of H. B. Bebe.)

Q. Are the meals just ordinary plain meals that are sufficient for people doing this type of work?

A. Yes, sir, they are.

Q. Then, in the operation of the cookhouse, in which the cook is merely, you say, serving ordinary plain meals, her expenses will be more or less fixed as to the amount she is to be paid for it, won't they?

A. Well, not necessarily.

Q. Of course, I realize that the expense that she has to undergo for the amount of food that she serves will depend on the number of employees who eat there, but I am asking you this: Since it is merely an ordinary meal that she is serving, the amount that each meal will cost here is pretty well standardized?

A. Well, it is a little different in the way you buy. If you buy in quantity, why, it is not fixed what her profit will be.

Q. Didn't you say a while ago that the amount of profit that she can make is limited by the fact that she can charge just 75 cents per meal at the present time? [60]

The Court: That is argumentative. That is not a proper question.

Q. (By Mr. Scott): Do you know whether the employees who live in the company bunkhouse and eat at the company cookhouse have deductions made for meals that they do not eat at the cookhouse?

A. I don't know that.

Q. When you originally talked to Mrs. LeCompte about becoming the cook, was it specifically said one way or the other about the kitchen help as

(Testimony of H. B. Bebe.)

to whether or not the company would furnish the kitchen help or whether she would furnish the kitchen help?

A. It was understood that she was to furnish the kitchen help.

Q. How many days does the mill operate per week? A. No?

Q. Yes. A. Five days, 40 hours.

Q. How many days per week does the cookhouse and bunkhouse—How many days per week are they available to the employees?

A. Well, the bunkhouse is available seven days and the cookhouse—I don't know—Sometimes the boys check out and are all gone, so that leaves the cook free. I don't know how many days or how often that happens, but it happens quite often, when they all check out on Friday night or Saturday morning.

Q. If all the employees do not check out on a week end, would it be necessary for the cookhouse to be open on Saturday and Sunday? [61]

A. Not always, no. It is not compulsory. It is not compulsory.

Q. In the operation of the planing mill and the sawmill of the Row River Lumber Company, you said the company had its own logging operation, is that correct? A. Yes, sir.

Q. Do they furnish their own steam in the operation of the mill? A. Yes, sir.

Q. Do they furnish their own water?

A. No, sir.

(Testimony of H. B. Bebe.)

Q. Where do they get their water?

A. The drinking water comes from Cottage Grove, the Cottage Grove water line.

Q. But they do furnish a bunkhouse for their employees, you said? A. Yes, sir.

Q. Does the company perform its own hauling of logs from the woods to the mill?

A. Partially.

Q. What do you mean, partially?

A. Well, part of it is contracted at so much a thousand.

Q. And part of it is performed by the company, too? A. We have our own trucks, yes.

Q. When the cook goes on vacation—Let me ask you this [62] question: Do you know whether the cook does take a vacation? A. Sir?

Q. Do you know whether the cook does take a vacation?

A. Whether she gets any vacation?

Q. Yes. A. I think she does, yes.

Q. During the time that she takes her vacations does she arrange for a substitute cook?

A. I think so, yes.

Q. Does the company approve the substitute that the cook selects any time she goes on her vacation?

A. I didn't get that.

Q. Does the company select or approve the substitute that the cook chooses when she goes on vacation? A. The cook makes her own choice.

Q. Then the responsibility under this agreement for the operation of the cookhouse is passed from

(Testimony of H. B. Bebe.)

the cook to her substitute without the necessity of company intervention or the company taking any action whatsoever?

A. I don't just follow that, Mr. Scott.

Q. Let me state it this way, then: The responsibility and the duty and obligation under this agreement that the cook is to operate the cookhouse, I say, pass from her to her substitute when she goes on vacation without any action necessary by the Row River Lumber Company? [63]

A. Yes, sir, that is right.

Q. When a cook is taken sick, does she arrange for a substitute during those periods?

A. I don't know that it has been done. I think the cook, the one that runs the cookhouse—I think Mrs. Garoutte was sick a little while and I think, if I remember right, she selected the substitute, I am not sure. I know I didn't.

Q. Do you know the reason that the Row River Lumber Company had for setting up the operation of the cookhouse on this basis rather than operating the cookhouse itself? What was the reason why they set it up on this basis?

A. On the way we are running it now?

Q. Yes, rather than the company operating the cookhouse?

A. Well, there is a much greater chance of waste when the company operates it than when an individual operates it.

Q. Also, does it relieve the company of the re-

(Testimony of H. B. Bebe.)

sponsibility of having to purchase food and seeing that the meals are prepared?

A. Well, I suppose it would, yes.

Q. Also, does it enable the company to have a cook who will work fairly long hours and receive only the difference between the amount she pays for her expenses and the amount she receives for meals? In other words, isn't it a means of getting rather cheap labor to operate this cookhouse?

A. You seem to know quite a little bit about it. You ought to know the difference between the cost and what she gets out [64] of it. You seem to have gone into it pretty thoroughly. You should know what her wages are better than I do.

Q. Perhaps I do know what the wages are. Under the agreement that you had with Mr. LeCompte for the operation of the cookhouse, is she expected to take precautions against accident and damage to the cookhouse and other property there in the cookhouse? A. Does she expect what?

Q. Is she expected to take precautions against accident or damage to the cookhouse or property of the company?

A. She is not held responsible for any.

Q. She is not held responsible for any damage?

A. She is not held responsible for any damage.

Q. You say under the agreement you had with Mrs. LeCompte, as long as the work is done properly, the company will have no complaint and will not try to supervise her?

A. How is that again?

(Testimony of H. B. Bebe.)

Q. I say, under the agreement with Mrs. LeCompte and the agreement with Mrs. Garoutte, so long as the work that the cooks perform is done properly, the company will have no complaint or will make no attempt to supervise the operation of the cookhouse, is that right?

A. That is right.

The Court: We will recess until 2:00 o'clock.

(Thereupon, at 12:55 p. m., a recess was taken until 2:00 p. m.) [65]

Court reconvened at 2:00 o'clock p. m. Thursday, March 4, 1948.

H. B. BEBE

thereupon resumed the stand and was further examined and testified as follows:

Direct Examination—(Continued)

By Mr. Scott:

Mr. Scott: At this time I wish to offer in evidence Plaintiff's Identifications No. 3 and 4.

Mr. Davidson: No objection.

The Court: Admitted.

(Group of statements, Row River Lumber Company, in re Mrs. Ida Gourette, thereupon received in evidence and marked Plaintiff's Exhibit No. 3.)

(Group of statements, Row River Lumber Company, in re Mrs. Edith LeCompte, thereupon received in evidence and marked Plaintiff's Exhibit No. 4.)

(Testimony of H. B. Bebe.)

Q. (By Mr. Scott): Mr. Bebe, you said previously the Row River Lumber Company had operated two cookhouses. Would you state at approximately what time they ceased operating the second cookhouse?

A. They operated two, you say?

Q. You said previously that the Row River Lumber Company [66] operated two bunkhouses, I mean.

A. Yes, sir.

Q. Will you state at about what time the company ceased operating the other bunkhouse?

A. Well, it must have been some time about November, or something like that.

Q. For how long did the company operate two bunkhouses?

A. Somewhere in the neighborhood of two years.

Q. What was the reason the company ceased operating the one bunkhouse?

A. Well, we did not have enough men to fill the two of them and we needed the other house for a person to live in.

Q. Does the Row River Lumber Company employ contractors to perform road work and things like that for the company?

A. That I don't know.

Q. At the present time does the Row River Lumber Company contract with or have a contract with Youngblood & Martin for certain purposes?

A. No, not now.

Q. Untily recently did they have a contact with those people?

(Testimony of H. B. Bebe.)

A. Well, I couldn't say to that. I don't know.

Q. When you made the arrangement or agreement with Mrs. LeCompte to act as cook at the cookhouse, did you tell her what her employment relationship with the Row River Lumber Company would be? [67]

A. No, I didn't.

Q. Was anything said at all about what her employment relationship would be with the company?

A. No, there wasn't. She was on her own.

Q. I beg your pardon?

A. She was on her own.

Mr. Scott: I ask that the last answer be stricken as not responsive to the question.

The Court: It may stand.

Q. (By Mr. Scott): The fuel that is used in the operation of the cookhouse is furnished the cook by the company, is that right?

A. Just how is that again?

Q. I say, the fuel that is used in the operation of the cookhouse is furnished by the company?

A. Yes, sir.

Q. Would you describe the procedure that the cook uses to get a load of wood delivered to her at the cookhouse?

A. She usually orders it from the wood man.

Q. Who is the wood man that you say she orders the wood from?

A. The man there that takes the wood from the sawmill and planing mill.

Q. Does the Row River Lumber Company sell this scrap wood to this wood man?

A. Yes.

(Testimony of H. B. Bebe.)

Q. Then does this wood man sell this wood around the area to different purchasers?

A. Yes, sir.

Q. And among the purchasers to whom he sells wood is the cookhouse of the Row River Lumber Company? A. Yes, sir.

Q. Does the cook pay for the wood or does the Row River Lumber Company?

A. The Row River Lumber Company pays for the wood.

Q. Yes, sir; but the cook orders the wood from the wood man? A. Yes.

Q. Then the wood man bills the Row River Lumber Company for the amount of the wood?

A. That is right.

Q. How long have you been connected with the lumbering business, Mr. Bebe?

A. About forty years.

Q. Do you know whether most sawmills and planing mills have a cookhouse operated in conjunction with the mill?

A. It depends on the place of operation.

Q. During the war, when rationing was in effect, do you know whether the Row River Lumber Company made application to the rationing board for supplemental rations for use in the cookhouse of the Row River Lumber Company?

A. Well, I couldn't answer that. [69]

Q. Did Mr. Hayes ever speak to you about seeing if extra rations would be needed at the cookhouse? A. No, he didn't.

(Testimony of H. B. Bebe.)

Q. In case it is necessary to repair the cook-house, is there any special procedure that Mrs. LeCompte has to follow to request repairs to be made?

A. No, there is no procedure. All she has to do is to make it known that she would like to have it done, what she would like to have done, and it is looked into and it is usually complied with.

Q. Is the same thing true as to replacement or repair of equipment in the cookhouse?

A. What?

Q. The repair and replacement of equipment in the cookhouse, what procedure does Mrs. LeCompte have to follow to request repairs or replacement of equipment in the cookhouse?

A. Sometimes she will voluntarily go and buy them and turn the bill over to the company, at the office.

Q. You say sometimes she does it and turns the bill over to the office?

A. Sometimes, if it is a small amount, dishes or something like that, she—dishes or something like that that she needs, she would probably buy a few and the bill is presented to the company.

Q. Then the company repays Mrs. LeCompte, is that right? [70]

A. Well, if she pays for it, they do.

Q. If she does not pay for it, the company will pay the seller for the product?

A. That is right.

Q. At other times the company itself will do the ordering of the equipment?

A. Yes, sir.

(Testimony of H. B. Bebe.)

Q. In selecting a person to operate the cookhouse of the Row River Lumber Company, do you consider that any special skill is required of a person to fulfill such a capacity, or would you say that anybody who is a good cook is able to serve as cook? A. Yes, a good manager.

Q. Anybody that is a fairly good cook and a fairly good manager is able to serve as cook at the cookhouse? A. I would think so.

Q. You do not have to be an expert chef or have any specialized training in purchasing to operate the cookhouse? A. No.

Q. Does the cook have any other responsibility that you know of other than the purchasing of food and the preparing of the food?

A. No, I wouldn't think so.

Q. Would you say that there are any other responsibilities of management in the operation of the cookhouse other than merely [71] purchasing the food and cooking the food?

A. No, I wouldn't think there was.

Q. Under this arrangement you have with Mrs. LeCompte, if the amount of money she receives per meal would not be sufficient to cover the cost of the food she buys and the help she retains, and to give her some compensation and if she brought the matter to the attention of the company that she was not receiving enough money for those purposes, would the company undertake to remedy the matter? A. Could not.

Q. I beg your pardon?

(Testimony of H. B. Bebe.)

A. Just state that question again.

Mr. Scott: Maybe you have answered it before. I will withdraw the question. You have answered it before. That is all.

Cross-Examination

By Mr. Davidson:

Q. I want to ask you a few questions now. Your position is that of mill superintendent?

A. Yes.

Q. In your position of mill superintendent, you have authority over the sawmill and planing mill, the manufacturing plant? A. Yes.

Q. Do you have any authority over the logging?

A. I have not. [72]

Q. Any over the timber cutting? A. No.

Q. That is an entirely different department from the mill? A. That is a different department.

Q. Were you there when the original arrangement was made with Mrs. Thomason?

A. I was working there, yes.

Q. Were you mill superintendent then?

A. Yes.

Q. Will you tell the Court what that arrangement was?

Mr. Scott: I beg your pardon, your Honor. I would like to object to this testimony as to Mrs. Thomason, because the conditions under which Mrs. Thomason served as cook were completely different from the conditions under which Mrs. LeCompte and Mrs. Garoutte served as cook, and the Govern-

(Testimony of H. B. Bebe.)

ment is making no contention at the time Mrs. Thomason was serving as cook that she was an employee of the company or that there was any violation of the Act during that time. The Government is limiting its case to the time subsequent when the Row River Lumber Company constructed its own cookhouse.

Mr. Davidson: Your Honor, the Government is contending this is an integrated operation. I think the history of this operation should show in the record.

The Court: Proceed.

Q. (By Mr. Davidson): Will you state what the arrangement [73] was that Mrs. Thomason worked under?

A. I don't know just what the arrangements were.

Q. Did she operate a restaurant or a cookhouse?

A. No. Mrs. Thomason operated—I didn't make the arrangement with Mrs. Thomason.

Q. Was that on company property?

A. No, sir.

Q. Did the company own the building in which it was operated? A. No.

Q. Was Mrs. Thomason married? A. Yes.

Q. What did her husband do?

A. They had a little store in conjunction with the place where they ate, I think.

Q. A store in conjunction with the cookhouse?

A. Yes.

Q. When Mrs. Thomason gave this up and Mrs.

(Testimony of H. B. Bebe.)

Garoutte came in, did you have anything to do with making the arrangement or agreement with Mrs. Garoutte? A. I didn't, no.

Q. You did have with Mrs. LeCompte?

A. I did, yes.

Q. Had you known Mrs. LeCompte before?

A. I had.

Q. I believe you testified you saw her and told her what the [74] arrangement was?

A. Yes.

Q. What did you tell her the arrangement was?

A. Well, I told her—I don't remember what the meals were at that time, but we told her the price, what they had been charging and what the subsidy was and what the company agreed to furnish.

Q. What did the company agree to furnish?

A. They agreed to furnish the light, water and fuel and a place where they dwell.

Q. You said you contracted this fuel with a fuel man? A. Yes.

Q. Did you have any fuel delivery equipment you could use for delivering the fuel?

A. No, we haven't any.

Q. You do not deliver any fuel at all?

A. No.

Q. It is all handled through the wood man?

A. Yes.

Q. As I understand you, Mrs. LeCompte and Mrs. Garoutte bought their own groceries?

A. Yes, sir.

(Testimony of H. B. Bebe.)

Q. Their profit, then, is the difference between the amount they receive for meals and the subsidy on the one hand and, on the other hand, the cost of their food and help, is that right? [75]

A. Yes.

Q. Do you consider that it takes any special skill to make a profit out of that situation?

A. Well, it would take some careful managing.

Q. Have you ever operated a restaurant?

A. No, sir.

Q. Do you know anything about it?

A. No, not about a restaurant.

Q. You have been asked to identify certain items here set forth in these statements. Did you have anything to do with the preparation of these statements that Mrs. LeCompte submitted to the company?

A. Let's see. I don't just——

Q. There are some statements in evidence here as Plaintiff's Exhibits No. 3 and No. 4, monthly statements.

A. Yes.

Q. Did you have anything to do with the preparation of those statements?

A. No, sir.

Q. You did not direct their preparation?

A. No, sir. I had nothing to do with it.

Q. Did you have anything to do with the financial transactions between Mrs. LeCompte and the company?

A. No, sir.

Q. You stated that you had supervision over the planing mill [76] and the sawmill properties and the cookhouse?

A. Yes, sir.

(Testimony of H. B. Bebe.)

Q. Did you agree with Mrs. LeCompte, when you made your arrangement, your original arrangement, that you should have supervision over the cookhouse? A. I did not.

Q. You do have supervision over the cookhouse on the property? A. Well, yes, I do.

Q. It is your responsibility to see that it is repaired when it needs it?

A. That is right.

Q. Did you ever tell Mrs. LeCompte what she shall have on the menu? A. No, sir.

Q. Or where she shall buy? A. No.

Q. Or whom she shall employ for helpers?

A. No, sir.

Q. What did you mean when you said you had supervision over the cookhouse?

A. I didn't say that.

Q. I believe you did say it. A. Did I?

Q. Yes. A. Well, maybe. [77]

Q. Do you have any authority to direct her in how she shall do her work, in how Mrs. LeCompte shall do her work?

A. No, I never have, no.

Mr. Scott: Your Honor, he is asking him directly if he had any authority to direct her in how she does her work. That is an opinion. I object to it.

The Court: You asked about it.

Mr. Davidson: He certainly did.

The Court: Go ahead.

Q. (By Mr. Davidson): Now, you also testified

(Testimony of H. B. Bebe.)

that you had a complaint that lunchboxes were not clean? A. Yes.

Q. You took this up with her, did you?

A. Sir?

Q. You took that up with Mrs. LeCompte?

A. Yes, sir, I did.

Q. Did you consider that you had authority to supervise her methods of cleanliness in the cook-house?

A. No. I don't know as I—It had to be taken to somebody, if there was a complaint about anything like that, for it to be looked into.

Q. If her services were such that you felt they were going to cause any unrest in the crew, you would have to terminate the arrangement?

A. That is right. [78]

Q. Do you know what profit Mrs. LeCompte makes from her operations?

A. I do not.

Q. Do you know what Mrs. Garoutte made?

A. No, I don't.

The Court: Maybe they didn't make any profit.

Mr. Davidson: Maybe not, your Honor. I asked if he knew what they made.

Q. Do you consider that the continued operation of the cookhouse is essential in the Row River Lumber Company operation?

A. Well, it is rather convenient.

Q. You testified there were six men in the bunk-house now? A. Yes.

Q. That is out of a crew of about 150?

(Testimony of H. B. Bebe.)

A. Yes.

Q. That is one bunkhouse you own. Are there other bunkhouses? A. Yes.

Q. Who owns them?

A. Humphrey, the store man.

Q. Has the company anything to do with that store? A. No, sir.

Q. Do you know if the company deducts store bills from wages? A. I don't know.

Q. You don't know? A. No. [79]

Q. Do you know if the company deducts charges for the bunkhouse, these other bunkhouse charges from wages?

A. I am not sure, but I rather think they do.

Q. Do you know if Mrs. Garoutte worked for Mrs. Thomason before she started herself?

A. I think she did.

Q. Do you eat your meals at the cookhouse?

A. I will average about a meal a week. I would say that would be a fair average.

Q. Do you know who made the arrangement with Mrs. Thomason?

A. Well, I didn't. I think probably Mr. Hayes did.

Q. Do you know who made the arrangement with Mrs. Garoutte?

A. I do not. I did not make it.

Q. Were you specifically authorized to make the arrangement with Mrs. LeCompte?

A. Yes. I was asked to.

Q. By whom? A. By Mr. Hayes.

(Testimony of H. B. Bebe.)

Mr. Davidson: That is all.

Redirect Examination

By Mr. Scott:

Q. You say you do not have supervision over the logging and timber operations of the Row River Lumber Company

A. No, sir, I don't.

Q. Who does have supervision over the lumbering and timber [80] operations?

A. You mean the logging?

Q. Yes.

A. Mr. Bloomer.

Q. Mr. Bloomer is employed by the Row River Lumber Company?

A. Yes, sir.

Q. And the employees working under Mr. Bloomer in the woods are employed by the Row River Lumber Company?

A. Yes, sir.

Q. When you said the company has no equipment for delivering the fuel——

A. They have not.

Q. I beg your pardon?

A. They have no equipment for delivering the fuel.

Q. They might not have special equipment, but they do have trucks, don't they?

A. Yes, but they are always busy somewhere else.

Q. When you said the company has no equipment for delivering fuel, you meant——

A. They have none engaged in that business of delivering fuel.

Q. The company has no equipment that is engaged in delivering fuel?

A. That is right.

(Testimony of H. B. Bebe.)

Q. But the company does own trucks that could be used to deliver fuel, if they so choose? [81]

A. Well, they could, if you wanted to take them off the job they are doing.

Q. Mr. Davidson asked you about your opinion of the skill required to operate the cookhouse. On your direct examination didn't you state anybody that was a fairly good cook and a fairly good manager could operate a cookhouse?

A. Well, they should be. I would think they would be capable.

Q. In your experience in the logging industry and in the operation of the mill, which you stated is quite a considerable time, so far as you know, specialized skill and training is not necessary to operate a cookhouse at a lumber camp?

A. Well, that might cover quite a bit. I don't know.

Q. We will put it this way, then: You do not have to take a special course in purchasing to be able to operate a cookhouse, do you?

A. No. I have never known of any.

Q. You do not have to go to a special school for cooks to be a cook at a cookhouse in a lumber camp, do you? A. No.

Q. So far as you know, the cooks that have been at the cookhouse of the Row River Lumber Company, that is, Mrs. Garoutte and Mrs. LeCompte, have acquired their skill in cooking in the kitchens of their homes, the same as any other housewife, is that true? A. Yes. sir. [82]

(Testimony of H. B. Bebe.)

The Court: The greatest school there is, the school of experience.

Mr. Scott: Yes, sir.

Q. You stated that you have supervision over the planing mill and sawmill and cookhouse, is that right?

A. It seems to me we have come back to that many times. I think I answered it four or five or six or seven or eight times now.

Q. Mr. Davidson, on cross examination, asked you about it, and I think you gave an answer in which you said you supervised the cookhouse to the extent of seeing that it is properly repaired and has the proper equipment in it and things of that nature.

A. I did, yes.

Q. Yes, sir. You also said that you eat on an average of one meal a week in the cookhouse?

A. I think that is about right, yes, sir.

Q. On your direct examination you stated that when you visit the cookhouse to eat your meals, you look around to see how the cookhouse is being operated and how conditions look, how it is?

A. Well, yes.

Q. Didn't you also say on your direct examination that if a complaint was made to you as to the operation of the cookhouse that you thought was justifiable you would feel you [83] should go to Mrs. LeCompte and that you would have authority under this arrangement to go to Mrs. LeCompte and speak to her about the complaint.

A. Well, I would go over and talk it over and

(Testimony of H. B. Bebe.)

see if it could be corrected, not that it would be because I had authority.

Q. Why would you go to her if you did not have authority? A. What?

Q. You would feel, would you not, that under that arrangement it was part of your duty, as superintendent of the mill, to see that the cookhouse was run properly, wouldn't you?

A. Yes, but anybody could do that. It would not necessarily have to be me.

Q. Will you explain that last statement of yours?

A. If somebody made a complaint, the one that made the complaint could go and talk about it and ask for something to be corrected, or something special.

Q. If an ordinary employee went to Mrs. LeCompte and made a complaint, there would be no reason why Mrs. LeCompte should feel she should do anything about it, if she did not want to, would there?

A. Well, anybody that is interested in their meals would be.

Q. If a complaint were made to you as to the operation of the cookhouse, and you went to Mrs. LeCompte and told her that a complaint had been made, and you had certain thoughts as to [84] certain changes to be made, would you expect Mrs. LeCompte to carry out your suggestions as to the correcting of the changes?

A. Well, I think I would, if such a complaint

(Testimony of H. B. Bebe.)

came that was justifiable, and I think Mrs. LeCompte would be glad to cooperate with me in my wishes.

Q. Would you expect her to comply with your wishes, even though she might not want to, if you thought your wishes should be complied with in the proper operation of the cookhouse?

A. I don't know—I don't want to answer that.

Q. I beg your pardon?

A. I don't want to answer that.

(Question and answer read.)

Q. Would you answer that question, please?

A. Well, I think, as much as I know of Mrs. LeCompte, she would grant immediately whatever complaint was made.

Q. Yes, I realize that, but if she felt in a particular case she did not want to comply with your wishes, but you thought that the cookhouse could not be properly operated unless your wishes were complied with, would you expect her to comply with what you asked her to do?

A. I think I would.

Q. You say you think you would?

A. Yes, sir. [85]

Q. Mr. Davidson asked you whether or not you considered the operation of the cookhouse as essential to the operation of the mill, and you said you thought it would be convenient?

A. Yes, sir.

Q. If the employees who eat at the cookhouse, at the mill, were not able to avail themselves of the

(Testimony of H. B. Bebe.)

convenience of eating at the cookhouse, would it seriously interfere with the operation of the mill if they quit?

A. If the ones that eat there—the ones that stay in the bunkhouse?

Q. No. I say, if the people who eat at the cookhouse——

A. Yes.

Q. ——were not able to get their meals there and quit the company because they were not getting their meals, would that seriously interfere with the operation of the mill?

A. It might make it a little difficult for a little while, but we would overcome it in some way.

Q. As to the employees who live in the bunkhouse, Mr. Bebe, I believe you stated they would be unable to work at the mill if they were not able to get their meals at the cookhouse?

A. That is right.

Q. During the last few years, especially during the war, was not the operation of the cookhouse essential to the continued operation of the mill?

A. Not much more so than now. [86]

Q. If the operation of the cookhouse is merely a convenience rather than a necessity to the operation of the mill, would you explain to me why the company invested all this money in the construction of the cookhouse, in the equipping of the cookhouse, and why they pay this subsidy to the cook per meal?

A. Were you ever around a cookhouse that made any money? Any operation of that kind? I have

(Testimony of H. B. Bebe.)

got forty years and I have got my first one to find yet. Every one of them is run at a loss to the company.

Q. If the cookhouse is run at a loss, and they are always run at a loss, is it not essential to the continued operation of the mill that they do have this cookhouse? The company is not undergoing this economic loss just for convenience, are they?

Mr. Davidson: That is argumentative.

The Court: That is argumentative, yes. Ask another question.

Mr. Scott: That is all, your Honor.

Recross Examination

By Mr. Davidson:

Q. If, of course, the employees quit in a large body for any cause, it would be an inconvenience, wouldn't it? A. Yes, sir.

Q. Does the agreement give you power to supervise the details of operation of the cookhouse? [87]

A. No, sir.

Q. If a complaint were made and you gave it to Mrs. LeCompte, would you expect to advise her in detail as to how that should be corrected?

A. No, I would not, not in detail, because I think she is capable—If I told her of the complaint, she would be capable of correcting whatever the complaint was.

Q. Suppose there was a complaint that there was not enough variety of food at breakfast,—

A. Yes.

(Testimony of H. B. Bebe.)

Q. Would you order Mrs. LeCompte as to any change she should make?

A. I would tell her what the complaint was.

Q. Would you tell her in detail how to correct it?

A. No, I couldn't. I wouldn't, anyway.

Q. In other words, you, as you testified here, would carry out the agreement?

A. Yes, sir.

Q. She had agreed to operate the cookhouse in a satisfactory manner?

A. Yes, sir.

Mr. Davidson: That is all.

Redirect Examination

By Mr. Scott:

Q. When you said you would not give Mrs. LeCompte detailed [88] instructions as to the meals, you meant by that that she is a good enough cook that she, herself, would know what changes to make without your explaining them to her?

A. I think so, yes, sir.

Mr. Scott: That is all.

(Witness excused.) [89]

MRS. EDITH LeCOMPTE

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. You are Mrs. Edith LeCompte?

(Testimony of Mrs. Edith LeCompte.)

A. Yes, sir.

Q. At the present time what work are you engaged in performing?

A. Cook at the Row River Lumber Company cookhouse.

Q. How long have you been cook at the Row River Lumber Company cookhouse?

A. Since May 1, 1945.

Q. Whom did you originally talk with when you went to work as cook? A. Mr. Bebe.

Q. Did Mr. Bebe seek you out or did you go to Mr. Bebe?

A. Mr. Bebe called me on the telephone.

Q. What did Mr. Bebe say to you?

A. He asked me if I would be interested in running the cookhouse.

Q. Did he say the company wanted to hire you to run the cookhouse?

A. Hire me to run the cookhouse?

Q. Yes. A. The company? [90]

Q. Yes. A. No, sir.

Q. Was the agreement between you and Mr. Bebe written or oral? A. Oral.

Q. For what length of time is that agreement with the company made to run?

A. No time at all.

Q. Was anything said at the time you talked to Mr. Bebe as to the means by which the agreement could be terminated? A. No, sir.

Q. Or would be terminated? A. No, sir.

Q. So far as you know, under the agreement, may the company terminate your services at any time?

(Testimony of Mrs. Edith LeCompte.)

A. Why, I suppose they could.

Q. Is your answer yes? A. Yes, sir.

Q. Is any notice necessary for terminating your services under the agreement?

A. Nothing was said about it.

Q. Your answer is no? A. No.

Q. Under the agreement can you quit any time you want to? A. Yes, sir. [91]

Q. Do you have to give the company any notice before you will quit?

A. Well, nothing was said about that, but I would.

Q. You would, but would you have to, if you did not want to? A. I don't think so.

Q. Your answer is no? A. No.

Q. In the operation of the cookhouse, did you furnish any equipment whatsoever, or do you furnish any equipment whatsoever?

A. No, sir, not the kitchen and dining room.

Q. In the living quarters of yourself and your family, do you furnish any equipment there?

A. It is mine, yes.

Q. Is all the furniture and furnishings in your living quarters your own? A. Yes, sir.

Q. The company furnishes none of those?

A. No, sir.

Q. But as to the kitchen and dining room, you furnish no equipment or fixtures or equipment of any kind? A. No, sir.

Q. Is any charge made against you for the use of the kitchen, dining room and your living quarters?

A. No, sir. [92]

(Testimony of Mrs. Edith LeCompte.)

Q. Under your arrangement with the company, what duties were you expected to perform?

A. I was to run the cookhouse.

Q. You were to run the cookhouse?

A. Yes, sir.

Q. In the operation of the cookhouse were you to furnish meals to any employees of the company who chose to eat there? A. Yes, sir.

Q. Was it part of your duty under your agreement to furnish meals to a person, even though you might not personally like him?

A. As long as he was a gentleman in the place, why, I would feed him.

Q. Could you refuse to serve a meal to an employee of the company, even though he was a gentleman but, for some reason, you just did not want to serve a meal to him under your arrangement?

A. I don't know. That has never come up.

Q. So far as you know at the present time, your duty is to furnish meals to all the employees who choose to eat at the cookhouse? A. Yes, sir.

Q. Do you serve meals to non-employees at the cookhouse? A. Yes, sir.

Q. Whom do the non-employees consist of? [93]

A. Well, it might be to somebody — Well, say transients, somebody going up the river. I would not ask who they are.

Q. About what would your income be a month from meals served to non-employees?

A. That I don't know. I would have to look at my statements. My statements show that. I couldn't tell you.

(Testimony of Mrs. Edith LeCompte.)

Q. About how many transients per month eat at the cookhouse?

A. Well, that varies. I don't think I could even estimate it.

Q. Would you be able to estimate the amount of income, then, from the transient trade?

A. From the transients, well, it would be around \$15 or something like that.

Q. The rest of the money you receive would be from meals furnished to the employees of the company?

A. No, sir. I have some boarders that work other places. I was free to take those in if I liked. I do not consider those people transients.

Q. When you talk about boarders, exactly who are they? A. They are working people.

Q. Working for the Row River Lumber Company?

A. No, sir. Some were outside people. They worked for other companies.

Q. How many boarders did you have?

A. Well, at present I have ten steady boarders and—

Q. You mean ten people who do not work for the Row River [94] Lumber Company?

A. No, they work for the Row River Lumber Company. I do not have but one—

Q. You just have one boarder?

A. One person.

Q. One person who eats with you that does not work for the Row River Lumber Company?

A. Yes.

(Testimony of Mrs. Edith LeCompte.)

Q. Other than the transients and this one boarder, is all the rest of your income derived from meals served employees of the Row River Lumber Company? A. At the present time, yes.

Q. At the present time? A. Yes.

Q. When did you start cooking for the Row River Lumber Company?

A. The first day of May, 1945.

Q. Prior to that time had you cooked for other lumber companies? A. Yes, sir.

Q. In your experience as a cook at lumber camps, for the Row River Lumber Company and other companies, prior to 1945, have you acquired experience that enables you to run a cookhouse without supervision? A. Yes, sir. I think so. [95]

Q. I beg your pardon? A. I think so.

Q. You consider yourself an excellent cook?

A. No, I wouldn't say that.

Q. A very good cook? A. Fair.

Q. But you do know how to run a cookhouse at a lumber camp without direct supervision from the outside? A. I think I do.

Q. Do you purchase the food that you serve at the cookhouse? A. Yes, sir.

Q. Do you hire your own help? A. Yes.

Q. How many helpers do you have at one time?

A. One.

Q. In the operation of a cookhouse, could you give, briefly, what you have to do? You buy your own food? A. Yes, sir.

Q. Prepare your own food? A. Yes, sir.

Q. You set the tables and serve the food?

(Testimony of Mrs. Edith LeCompte.)

A. I do not set the tables. My helper sets the tables.

Q. What other duties does your helper perform besides setting the tables?

A. She does all the dining room work and carries the food [96] onto the tables after it is dished up, and peels the potatoes. That is her duty.

Q. Does she do anything else?

A. And wash dishes.

Q. Does she make the toast?

A. She makes the toast, yes.

Q. Do you do anything besides cooking the food and buying the food?

A. Well, I do all my work there.

Q. Do you help your kitchen helper wash the dishes?

A. No, sir, that is her duty. I don't do that.

Q. Are buying the food and preparing the food your main duties? A. Yes.

Q. Do you ever buy food or charge food in the name of the Row River Lumber Company?

A. Those potatoes you spoke of, that was during the war when potatoes and everything was hard to get, and I had them to get those potatoes for me here; they were shipped down to me and I paid for those myself out of my own money. That money was coming to me; that was held out.

Q. I hand you Plaintiff's Exhibit No. 4 and ask you to look at that exhibit. I will ask you some questions about it. This exhibit comprises several statements. Are these prepared by the Row River Lumber Company and given to you with your check?

(Testimony of Mrs. Edith LeCompte.)

A. They come with my check, yes, sir.

Q. Those statements are prepared by the company?
A. As far as I know.

Q. You do not prepare them and submit them to the company?
A. No, sir.

Q. So far as you know, the company prepares them and gives them to you with your monthly check?

A. Whatever men they have working for them.

Q. I show you a statement with the number 5016, dated July 12, 1945, which contains the entry "Less two sacks potatoes, \$8.02," and ask you to explain that entry.

A. That is when potatoes were hard to get and we could not buy them in small towns and they could buy them up here, so I sent up here for these potatoes and they were sent down to me, and, instead of my just spending the money, it was held out of what money was coming to me.

Q. Who did you send up to get the potatoes for you?

A. I had Carl Shoberg to phone to Portland. I don't know where he bought them.

Q. Mr. Shoberg works in the office of the Row River Lumber Company?
A. Yes, sir.

Q. At the camp?
A. Yes, at the camp.

Q. The two sacks of potatoes were delivered to you and the [98] amount \$8.02 was deducted?

A. Deducted from my money that was coming to me.

Q. I hand you a statement with the number 4986 on it, dated June 13, 1945, and ask you what the entry "Two sacks of potatoes, \$8.68" means.

A. Means the same thing as the other one.

(Testimony of Mrs. Edith LeCompte.)

Q. You could not get potatoes down there, so you asked the company to get the potatoes for you in Portland? A. Yes, sir.

Q. Also this same statement, No. 4986, dated June 13, 1945, shows the entry "Draw 6/5/45. \$200." I will ask you what that entry means?

A. Well, that is the only money I ever went and drew. That money was coming to me. I have—I could have gotten the whole thing if I had asked for it, what was coming to me. I needed it. I had promised to pay a bill and I like to keep my word, so I just drew \$200.

Q. You drew \$200 from the company?

A. Yes.

Q. This advance of \$200 was so you could pay this bill you are talking about?

A. I had already earned this money, but before my first pay day—

Q. Yes.

A. —I didn't understand pay day was on the 15th, so I [99] wanted to pay a bill and I asked for that. You will notice on all my statements that is the only draw that has ever been on it.

Q. But that draw was a draw that you got from the company for money due you prior to the regular pay day? A. Yes.

Q. I hand you Statement No. 29, dated August 13, 1945, and ask you to explain the entry "Less R. E. Lafferty & Sons, \$8.20"?

A. That is a wholesale house. I couldn't buy shortening so that was bought for me and sent down.

Q. Who paid it for you?

A. I don't know that. The best I remember, it came from the express office over in Cottage Grove.

(Testimony of Mrs. Edith LeCompte.)

Q. Did you ask the Row River Lumber Company to pay it for you, to buy this shortening for you, and sent it to you? A. Yes.

Q. You say yes?

A. The same as the potatoes, yes.

Q. You asked Mr. Shoberg to order it for you?

A. I think so.

Q. Was your answer "yes" that you asked Mr. Shoberg to order it for you? A. Yes.

Q. I show you Statement No. 96, dated 10/12/45, with the [100] entry "Less: 12 3-lb. jars Spry, \$8.16," and ask you what that entry means.

A. The same as the others.

Q. You needed some Spry? A. I did.

Q. You were unable to get it and you asked Mr. Shoberg to order it for you?

A. I don't remember who got that for me, those three jars.

Q. You asked Mr. Shoberg to arrange to get it for you from Portland?

A. I don't remember that.

Q. How come it is on the company's statement?

A. I don't remember who I asked to get it.

Q. But you did ask somebody? A. Yes.

Q. Somebody working for the company to get the Spry for you? A. Yes, sir.

Q. I also show you a statement dated 11/13/45 with the entry "Less: 10 3-lb. jars Spray at 68 cents, \$6.80." A. The same thing.

Q. The same thing? A. Yes.

Q. Also, Statement No. 159 dated 12/11/45 with the entry "Less: 36 pounds shortening, \$7.68."

(Testimony of Mrs. Edith LeCompte.)

A. The same thing. [101]

Q. Did the company have any objection to ordering this merchandise for you? A. No, sir.

Q. Those commodities? A. No, sir.

Q. You said you talked to Mr. Bebe when you first arranged to become a cook at the Row River Lumber Company? A. Yes, sir.

Q. What was said at the time about the amount you would get per meal, if anything?

A. He told me the price they were getting and that is the way it was undertaken.

Q. When you first started as cook in May, 1945, and up until August, 1946, the price of the meals was 55 cents, is that right?

A. I believe so, yes, sir.

Q. Then, in August, 1946, when the price was increased to 65 cents, what were the circumstances or what was the occasion for increasing the price of meals at that time? Did you go to the company and talk to them about increasing the price of meals?

A. Yes. Well, Mr. Bebe asked—I asked him to increase the price of meals due to the raise in prices.

Q. What did Mr. Bebe say?

A. We all got together and talked it over, and that is what [102] we did, and they decided that they would give me the raise.

Q. On September 9, 1947, the price of meals was increased to 75 cents. Do you recall the circumstances resulting in that increase?

A. Yes, sir, it would be the same proposition.

Q. The same proposition? You went and asked if you could increase the price? A. Yes, sir.

(Testimony of Mrs. Edith LeCompte.)

Q. It is your understanding under this arrangement with the company that the approval of the company must be obtained to increase the price of meals served company employees?

A. No, sir, I don't think so. We all talked it over, however, and it was agreed with all of us.

Q. I didn't ask you that. Was it your understanding that you would have to talk it over with the company and get the company's approval before you could increase the price?

A. Yes.

Q. Your answer is yes?

A. Yes.

Q. Under this arrangement with the company to furnish meals, do you select your own menus?

A. Yes.

The Court: Meat and potatoes in a logging camp and lots of dessert; two kinds of dessert, maybe three.

Mr. Scott: Q. Is it your understanding under the arrangement [103] with the company that the meals must be satisfactory to Mr. Bebe?

A. No, sir.

Q. Isn't it your understanding, under your arrangement with the company, that the cookhouse and dining room must be operated to the satisfaction of Mr. Hayes and Mr. Bebe?

A. Well, I guess so, yes, sir.

Q. Your answer is yes?

A. Yes, sir.

Q. Would that mean that the meals you serve would have to be satisfactory to Mr. Hayes and Mr. Bebe?

A. I don't think so.

Q. What do you mean when you say that is your understanding—

(Testimony of Mrs. Edith LeCompte.)

A. I run the cookhouse myself, and I was my own boss and I served what I pleased.

Q. I hand you here what has been marked Plaintiff's Identification No. 5 and ask you if that is a statement signed by you? A. Yes, I signed it.

Q. You signed that? A. Yes, sir.

Q. Would you read this paragraph (indicating) in your statement, please. Read it to the Reporter. Read it out loud.

A. "It is my understanding that the cookhouse and dining room must be operated to the satisfaction of Mr. Hayes and Mr. Bebe whom I consider as my bosses. Our agreement for [104] the operation of the cookhouse and dining room is not for any definite length of time and is dependent upon mutual satisfaction. I can quit at any time I may wish."

Q. Read that again.

A. "I can quit at any time I may wish, and Mr. Hayes and Mr. Bebe can terminate my services at any time they may wish to do so."

Q. Is that statement correct? Is that still your statement? A. Yes, sir.

Q. That is your statement at the present time as testimony in this trial?

A. At this present time?

Q. Yes.

A. I wasn't under oath when that was signed. I was aggravated to sign that and pestered.

Q. I didn't ask you that.

Mr. Scott: I move that her answer be stricken.

The Court: Young man, you are impeaching your own witness.

(Testimony of Mrs. Edith LeCompte.)

Mr. Scott: I am not trying to impeach her.

The Court: What are you trying to do?

Mr. Scott: May I ask her if that is her testimony at the present time?

The Court: You are trying to impeach your own witness. She gave testimony as to what she did and you are trying to show to the contrary, according to a statement she previously [105] made. You are bound by the testimony she has given here. You called her.

Mr. Scott: Yes.

The Court: You vouched for her.

Mr. Scott: Yes.

Q. Is that your statement? A. Today?

Q. Yes.

A. No, sir, that is the one I signed when I was pestered to sign it.

Q. You said a while ago, I believe, that the cookhouse and dining room must be operated to the satisfaction of Mr. Hayes and Mr. Bebe?

A. Will you repeat that to me, please?

(Question read.)

A. Yes, sir.

Q. In what capacity do you consider Mr. Hayes and Mr. Bebe in relation to the operation of the cookhouse?

A. Well, they are the company that I operate the cookhouse for and I am protected, through them, of getting the board money from the employees that board there.

Q. You stated a while ago that Mr. Hayes and Mr. Bebe could terminate your services at any time?

(Testimony of Mrs. Edith LeCompte.)

A. Yes, sir.

Q. If the food you serve out there did not meet the satisfaction [106] of Mr. Hayes and Mr. Bebe, they could terminate your services immediately under the arrangement, is that right?

A. Nothing like that was ever talked over.

Q. I am just asking you if, under the arrangement you have, if the meals you serve were not satisfactory to Mr. Hayes and Mr. Bebe they could terminate your services?

A. I would say they could, yes, sir.

Q. In your operation of the cookhouse, you try to serve food which will meet the satisfaction of Mr. Hayes and Mr. Bebe?

A. Yes, sir, and the boarders.

Q. And the boarders? A. Yes, sir.

Q. You said a while ago that you did not think you had to serve food to meet the satisfaction of Mr. Hayes and Mr. Bebe. Did you mean that there had never been anything said about it specifically, or that you do try to serve food that meets their satisfaction? Is that what you meant to say?

A. Yes, sir. That is what I tried to do—what I try to do.

Q. Do Mr. Hayes and Mr. Bebe ever come over to the cookhouse to inspect the way it is being operated?

A. They never did come in and say they came to inspect the cookhouse, no.

Q. They do come over there for meals?

A. Yes, sir.

Q. You live with your family at the cookhouse?

(Testimony of Mrs. Edith LeCompte.)

A. Yes.

Q. What does your family consist of?

A. My husband and daughter.

Q. Your husband and daughter help you around the cookhouse? A. My husband does.

Q. What does your husband do?

A. Carries in the wood.

Q. Does your daughter help you at all?

A. No, sir; she is lazy.

Q. The company furnishes all the water, light and fuel for operating the cookhouse, is that true?

A. Yes.

Q. When you want a load of wood for the cookhouse, whom do you ask and what procedure do you go through to get the wood?

A. The man that delivers the wood.

Q. Do you ask the man who delivers the wood?

A. My husband does. I don't, but it is for me.

Q. It is for you? A. Yes.

Q. Who pays for the wood?

A. The company, as far as I know.

Q. Do you tell the company that you have purchased a load of wood or does the person who delivers the wood notify the company?

A. He has a ticket and that is supposed to be signed by me or [108] my husband, showing that he delivered a load of wood to the cookhouse. That is all it is for.

Q. So far as you know, he turns the ticket over to the company when they pay him for it?

A. That is all I know about it. I get the wood, and that is all.

(Testimony of Mrs. Edith LeCompte.)

Q. Who is your kitchen helper at the present time? A. Thelma Dewitt.

Q. How long has she been your helper?

A. Since July 7th.

Q. Do you know how many hours per week Thelma Dewitt works?

A. Well, with the crew we have now, it is about thirty-nine and a half hours.

Q. A week?

A. Yes, sir. That is to the best of my knowledge. I don't keep no time on her, but I could very easily figure it out.

Q. Would you figure it up, please? When is breakfast served? A. 6:25.

Q. Does Thelma Dewitt help you prepare the breakfast? A. Just the toast.

Q. Just the toast? A. Yes.

Q. What time does she have to begin work to prepare the toast? What times does she have to begin work to prepare the toast at breakfast, do you know? [109] A. 6:00 o'clock.

Q. Does she set the table for breakfast?

A. The evening before, yes, sir. She does all the dining room work.

Q. After she begins work at 6:00 o'clock, how long does she work before she is off?

A. 8:00 o'clock, around 8:00 o'clock.

Q. Is she off at 8:00 o'clock then?

A. Off at 8:00 o'clock?

Q. Yes. A. Yes, sir.

Q. When does she go back to work again?

A. 11:00 o'clock.

(Testimony of Mrs. Edith LeCompte.)

Q. How long does she work then?

A. Well, she is usually through about a quarter to 2:00.

Q. Then when does she return to work?

A. 5:00 o'clock.

Q. When does she cease working for the day?

A. 7:00, around 7:00 o'clock.

Q. How many days per week do you operate the cookhouse?

A. Seven days a week, only if they should check out, I don't have to operate the cookhouse on Sunday.

Q. When they all check out, you do not have to operate it on Sunday? A. That is right.

Q. How many weeks per month is it that they all check out and you do not have to operate the cookhouse on Sunday? A. I don't know; very few.

Q. Very few times you do not have to operate the cookhouse on Sunday? A. Yes.

Q. From the figures you just gave me, Miss De-witt would work there six and three-quarter hours.

A. She goes home by 1:00 o'clock on Saturday and does not return to work until Monday morning.

Q. Is that every week that she does that?

A. Every week.

Q. When do you begin work in the morning?

A. 5:00 o'clock except Saturday and Sunday.

Q. After you begin work at 5:00 o'clock, how long do you work before you have a rest?

A. Well, I am on the job until about 1:00 o'clock.

Q. Until about 1:00 o'clock?

A. Yes. However, I am not working steady all

(Testimony of Mrs. Edith LeCompte.)

that time, but I am there. Because I am my own boss, I thought I could do as I pleased.

Q. Do you know how many hours you work a week? A. No, sir.

Q. Could you make some kind of a statement or estimate as to how many hours you work a week?

A. No, sir, I couldn't.

Q. You work over 40 hours a week?

A. Oh, I think so.

Q. Every week?

A. Every week that I am there.

Q. Every week you are there you work over 40 hours a week. Would you have any idea how many hours you work in excess of 40 hours a week? Is it at least 10 or at least 5? A. I don't know.

Q. You say you start to work at 5:00 o'clock and then you cease working when?

A. At 1:00 o'clock.

Q. At 1:00 o'clock? A. Yes.

Q. Then when do you begin work again?

A. 4:00 o'clock.

Q. And you work until when?

A. I am usually through by 7:00 o'clock now.

Q. You are usually through by 7:00 o'clock?

A. The work varies and the hours vary. The more boarders you have the more hours you have to put in.

Q. On Saturday and Sunday when do you begin work?

A. On Saturday I begin my work at 5:30.

Q. And you work until when?

A. Well, it would be 1:00 o'clock, the same as the other days. [112]

(Testimony of Mrs. Edith LeCompte.)

Q. Then when do you come back to work?

A. 4:00 o'clock.

Q. And then you work until when?

A. Then I am usually through around 6:00 o'clock.

Q. You work the same hours on Sunday, do you, or do you work different hours on Sunday?

A. Shorter hours on Sunday. It is according to how many people I cook for.

Q. What would be a usual Sunday?

A. Well, I do not begin my work on Sunday until 6:30.

Q. When do you stop work?

A. Then I would be through by one o'clock. I would be there all the time but I would not work all the time.

Q. Is it necessary that you remain in the cook-house?

A. I could go out for a half hour or so, if I wanted to, on Sunday morning.

Q. On Sunday morning? A. Yes, sir.

Q. On the other mornings, though, when the mill is operating, and on Saturday mornings, it is necessary that you be in the cookhouse all the time you say you are there?

A. It would work the same way on Sunday because there isn't so many men to cook for.

Q. During the five days that the mill is running, are you always in the cookhouse during those hours that you stated? [113]

A. That I am working, is that what you mean?

Q. Yes. A. Yes.

(Testimony of Mrs. Edith LeCompte.)

Q. From 5:00 to 1:00 and from 4:00 to 7:00?

A. Yes.

Q. You are working in the cookhouse the five days during all that time? A. Yes.

Q. And on Saturdays you work in the cookhouse from 5:30 until 1:00 and from 4:00 to 6:00?

A. Yes.

Q. And on Sundays you work about the same as on Saturdays? A. About the same.

Q. About the same? A. Yes.

Q. How long have you worked those hours that you have just stated?

A. Well, that is hard to say.

Q. Since you began work in May, 1945, have you always worked about that many hours?

A. No, I would say the last year the hours have been shorter.

Q. Prior to the last year, you worked longer hours than those you just stated? A. Yes.

Q. Who was your kitchen help prior to Thelma Dewitt? Who was [114] your kitchen helper prior to her? A. Shirley Radcliffe.

Q. When did she begin working for you?

A. The first part of April, I think.

Q. 1947? Would that be April, 1947?

A. Yes.

Q. How many hours a week did she work?

Mr. Davidson: I am going to object to this line of testimony, your Honor. This proceeding is to enjoin the continued violation by the company. Something that happened to an employee who is no longer there would be irrelevant in this case.

(Testimony of Mrs. Edith LeCompte.)

The Court: How long ago was it?

Mr. Davidson: This was two years ago.

Mr. Scott: It is a year ago.

The Court: You may inquire.

Mr. Scott: Q. Do you know how many hours Miss Radcliffe worked during the week?

A. I couldn't say that. I didn't time her at all. She was a very slow person, so I couldn't say. That is out of the question.

Q. Did she work over 40 hours a week?

A. I don't know.

Q. Do you have any idea whether she worked over 40 hours a week? A. No. [115]

Q. Do you know when Shirley Radcliffe began work in the morning? A. Came to work—

Q. When did she begin her work?

A. She worked the same as the other girl, the same as the girl that works for me now.

Q. You mean just thirty-nine and a half hours a week?

A. I don't know about that. I think she went to work at the same time as Miss Dewitt.

Q. She began work at the same time?

A. Yes.

Q. That would be 6:00 o'clock in the morning?

A. Yes.

Q. And she would work until when?

A. That I don't know. I didn't pay any attention to her. I just let her work and do her work as slow as she wanted to do it.

Q. Did you have a kitchen helper named Edith Ponton? A. Edith Ponton, yes.

(Testimony of Mrs. Edith LeCompte.)

Q. When did she work for you, do you recall?

A. I don't know. I would have to have my books on that to answer these questions directly.

(A short recess was then taken.)

Mr. Scott: Q. Mrs. LeCompte, as to your statement as to the daily hours you worked, which you said was from 5:00 to [116] 1:00, 4:00 to 7:00, five days a week, and 5:30 to 1:00 and 4:00 to 6:00 on Saturdays and Sundays, how many hours do you work a week now?

A. I don't know. I don't want to figure it up. You figure it up.

Q. From 5:00 to 1:00 and 4:00 to 7:00, that would be eleven hours for five days a week; 5:30 to 1:00 and 4:00 to 6:00, two days a week, would be nine and a half, or a total of 74 hours a week. Is that correct?

A. I don't work those hours on Sunday, every Sunday.

Q. But you do work some Sundays?

A. Some Sundays. I don't know if I can tell you how many. During the month I wouldn't be able to tell you how many.

Q. But the only days on which those hours are varied would be on Sunday? A. Yes.

Q. I think you said you worked those hours for about a year and, prior to that, you worked a little longer, is that right? A. Yes.

Q. Are you paid any money by the Row River Lumber Company other than the money which you receive for the meals that you serve the employees at the cookhouse? A. No, sir.

(Testimony of Mrs. Edith LeCompte.)

Q. Are you paid any extra compensation as overtime by the Row River Lumber Company for hours worked in excess of 40 per week? [117]

A. No, sir.

Q. Do you keep a record of the hours you work and the amount of money you receive from the Row River Lumber Company?

A. I don't keep a record of the hours, but my statements show what I receive; that money that is held out from the boarders, that is all I receive.

Q. Do you turn in a record of your daily and weekly hours?

A. No, sir.

Q. To the Row River Lumber Company?

A. No, sir.

Q. How much do you pay your present kitchen helper?

A. \$100 a month, board and room.

Q. How much have you paid your previous kitchen helpers, do you recall?

A. The same.

Q. \$100 a month?

A. Board and room.

Q. Plus board and room?

A. Yes, sir.

Q. Do you ever pay them anything additional, any additional money as overtime compensation?

A. No.

Q. In the event they worked over 40 hours a week?

A. No, sir.

Q. Did you ever keep a record of their daily and weekly hours [118] worked?

A. No, sir.

Q. Did you ever turn in such a record to the company?

A. No, sir.

Q. Is the time that you begin work and cease work—the time that you begin and the time that you work during the day and the time that you cease

(Testimony of Mrs. Edith LeCompte.)

work at the end of the day, is that dependent upon the time that you serve your meals? Is that right?

A. My meals are all served at certain times in the day.

Q. That is what I mean. A. Yes, sir.

Q. The time you serve your meals is dependent upon the starting and quitting time of the mill and the woods employees, is that right?

A. Yes, sir.

Q. Do you take a vacation every year, Mrs. LeCompte? A. Yes, sir.

Q. When you go on a vacation, do you arrange for a cook to substitute for you? A. Yes, sir.

Q. Have you ever been ill since you became cook so that it was necessary for you to have a substitute? A. No, sir.

Q. When you arrange for a substitute when you go on a vacation, [119] do you have to talk to Mr. Bebe or Mr. Hayes and get their approval?

A. No, sir.

Q. The operation of the cookhouse passes from you to the substitute without any interference or intervention by the company? A. Yes, sir.

Q. Have you ever wanted to take a vacation and the company would not let you take it at the time you originally wanted to? A. No, sir.

Q. Are you free to serve transients without the company's approval? A. Yes, sir.

Q. Are most of the transients you serve those people that have other business with the company?

A. Not that I know of, sir.

(Testimony of Mrs. Edith LeCompte.)

Q. How much do you charge transients for meals? A. 75 cents.

Q. I think you said that the amount you obtained from transients per month amounts to about \$15? A. Something like that, yes.

Q. I hand you Plaintiff's Exhibit No. 4, taking as an example the statement with the number 224 on it with the date 2/12/46; the statement shows 1,584 meals were paid for at a price of 40 cents and 1,712 meals were paid for at a price of 15 cents bonus. Would you state why there is a larger number of meals paid for at the bonus than meals for which deductions were made?

A. To the best of my knowledge, all those odd meals were paid in cash to me for whatever I was getting for a meal.

Q. By the employees?

A. No, by the boarders themselves.

Q. That is what I mean.

A. This 15 cents is paid by the company as a bonus.

Q. In other words, if an employee so chooses, he can pay the amount of the payroll deduction to you in cash and not have it deducted from his wages? A. Yes, sir.

Q. But, in that event, the company still pays you the amount of the subsidy for that meal?

A. Yes, sir.

Q. There are several other statements in this exhibit in which the same situation exists, that there will be more meals for which subsidy is paid than

(Testimony of Mrs. Edith LeCompte.)

for which payroll deduction is made. Is your explanation in those cases the same?

A. Yes. If the boys pay cash for meals, then the company pays the 15 cents, or whatever it was, bonus on top of that. They pay that themselves.

Q. There is also an entry on that statement, No. 224, dated 2/12/46 which shows "65 meals at 55 cents, \$35.75." What does that entry represent? [121]

A. That is company meals, eaten by company men.

Q. Eaten by company men other than employees?

A. Mr. Hayes and Mr. Noyes and others that they might bring.

Q. Those are officers of the company?

A. Officers, yes. That is what it is.

Q. I will show you a statement in Plaintiff's Exhibit No. 4 with the number 834 on it, dated August 11, 1947, which contains the entry: "17 meals at 50 cents (Youngblood & Martin)" and ask you what that entry represents?

A. That is the bonus paid on the meals where the boys paid cash for the other.

Q. The Youngblood & Martin entry, I am talking about, 17 meals at 50 cents, Youngblood & Martin. Does that entry represent meals furnished to a contractor with the company named Youngblood & Martin?

A. Employees of Youngblood & Martin.

Q. Or employees of Youngblood & Martin?

A. Yes.

(Testimony of Mrs. Edith LeCompte.)

Q. Are Youngblood & Martin performing some work for the company?

A. I don't know anything about that.

Q. As to these employees of Youngblood & Martin, did the company ask you if they could come over and eat in the cookhouse?

A. No, sir. [122]

Q. They just came over and ate in the cookhouse?

A. I made arrangements with them.

Q. You made arrangements with them?

A. Yes. It was understood they would pay me the cash.

Q. What I mean is this: Did the company ask your approval if you would furnish meals to employees of Youngblood & Martin?

A. No, sir.

Q. In addition to the meals that you served employees of the Row River Lumber Company in the cookhouse, you also served some lunches?

A. Yes, sir.

Q. What employees are those lunches prepared for?

A. Employees of the Row River Lumber Company.

Q. Are they the employees who work in the woods?

A. Yes.

Q. How many lunches do you prepare?

A. Now I am preparing three.

Q. How many have you prepared in the past?

A. Oh, I would say eighteen.

(Testimony of Mrs. Edith LeCompte.)

Q. How long ago was it you were preparing eighteen lunches a day?

A. Oh, I don't know.

Q. Do you have some idea?

A. It might have been two years ago. I don't know.

Q. But you have prepared as high as eighteen?

A. Yes, sir, I have.

Q. When employees of Youngblood & Martin ate at the cookhouse, were they charged the same price as employees of the Row River Lumber Company for their meals? A. Yes, sir.

Q. Were you told that they should be charged the same price? A. No, sir.

Q. Nothing was said whatsoever about getting your consent to have these employees eat at the cookhouse? A. No.

Q. When the arrangement was made between you and Mr. Bebe for you to be the cook at the cookhouse, was anything said that you should lease the cookhouse from the company? A. No, sir.

Q. Was anything said as to whether or not you would be an employee or a contractor for the company? A. I don't understand the question.

Q. When you originally made your oral agreement with Mr. Bebe, what did he say as to whether you would be an employee or a contractor of the company?

A. I would work for myself, if that is what you mean.

Q. Did he specifically say you would work for

(Testimony of Mrs. Edith LeCompte.)

yourself, or is that what you have come to learn since then? A. I would be running it myself.

Q. That was your understanding at the time?

A. Yes.

Q. Since the company sets the amount that you can charge for a meal, does that limit the profit that you can make from the operation of the cook-house?

A. Well, the more you can charge for a meal the more you can make.

Q. That is right. Would the answer be, then, Yes, that the company does set a limit on the amount of profit you can make by setting the amount you can ask for your meals?

A. Nothing was ever said about that. The price was set for the meals and that is all there was to it.

Q. That is all there was to it? A. Yes.

Q. You cannot charge any more than the price set for the meals? A. Not to the employees.

Q. Since you have been cook at the Row River Lumber Company from 1945, have you cooked there regularly and constantly? A. Yes, sir.

Q. The nature of your work has not been that you can cook when you please and not cook when you please?

A. Well, it takes so long to prepare a meal. It is the same every day.

Q. You do not work just casually, when you want to, and not work down there when you don't want to work? You work there regularly and steadily every day? [125] A. Why, sure.

(Testimony of Mrs. Edith LeCompte.)

Q. Since you began cooking for the Row River Lumber Company in 1945, have you cooked for any other company? A. No, sir.

Q. Since you originally began cooking for the Row River Lumber Company in 1945, have you held yourself out to other lumber camps as being in the market for a contract to cook for them?

A. No, sir.

Q. Have you not shifted your services from camp to camp since you began cooking at the Row River Lumber Company? A. No.

Q. But you have worked for them constantly?

A. Yes.

Q. Under the original agreement, when you first began cooking for the Row River Lumber Company, you said there was no term for which the agreement was to run? A. No, sir.

Q. You did not agree to work for any specified season or for a specified year or anything like that?

A. Oh, no, sir.

Q. There has been only one cook at a time cooking at the cookhouse? A. Yes, sir.

Q. You perform all your work in the cookhouse furnished by the Row River Lumber Company? [126] A. Yes, sir.

Q. Other than the approximately \$15 you receive from transients per month and this one boarder, you receive all the rest of your money for meals furnished the employees of the Row River Lumber Company?

(Testimony of Mrs. Edith LeCompte.)

A. No, sir, other boarders; I may take in other boarders.

Q. Yes, ma'am, but I am saying at the present time you just have that one boarder?

A. Well, I don't know whether I have him or not. He is in the hospital.

Q. About how much money do you take in a month for meals served to persons other than employees of the Row River Lumber Company?

A. I don't remember. It is down in a lump sum. At the end of the year it shows. You have it there, and as for telling you how much a month, I can't.

Q. I hand you what has been marked for identification No. 6 and ask you what that book is?

A. This is an expense account, each month since I have been with the Row River Lumber Company cookhouse.

Q. Does that contain all the expenditures, all the expenses that have been incurred for the purchase of food and for help? A. Yes, sir.

Q. Does that also show the amount of profit that you make at the end of each month? [127]

A. Not all of it. The little slip of paper does.

Q. What little slip of paper are you talking about? A. That you have.

Q. You are referring to Plaintiff's Exhibit No. 4, is that correct?

A. No, the little slip of paper.

Q. That you gave the inspector?

A. That shows the yearly cash. That is it. This

(Testimony of Mrs. Edith LeCompte.)

is for each year, cash money, and the company has nothing to do with this.

Q. I hand you what has been marked Plaintiff's Identification No. 7 and ask you to identify it.

A. You want me to explain this?

Q. Yes.

A. It shows the cash money that I receive from outside boarders and transients, other than the Row River Lumber Company men for each year. Shall I state the amount?

Q. Yes; please state the amount.

A. 1945 was \$191.80; 1946 was \$324.50; and 1947 was \$544.05.

Q. As I understand it, then, Mrs. LeCompte, Plaintiff's Identification No. 7 is the cash that you have received in addition to the payments?

A. What shows on my statement, yes.

Q. In addition to the payment shown on Exhibit No. 4 of the plaintiff?

A. Sometimes it shows some cash on there that they don't know [128] anything about.

Mr. Scott: I offer this slip in evidence.

Mr. Davidson: Does that purport to be an original record?

Q. (By Mr. Scott): Is this an original?

A. An original, yes.

Mr. Davidson: It is not explained.

Mr. Scott: She has explained it.

Mr. Davidson: She can testify to what it is, but I object for the record. It is not admissible on any ground.

(Testimony of Mrs. Edith LeCompte.)

The Court: Admitted, subject to the objection.

(Memorandum in re cash received thereupon received in evidence and marked Plaintiff's Exhibit No. 7.)

PLAINTIFF'S EXHIBIT No. 7

1945—Cash	191.80
1946—Cash	324.50
1947—Cash	544.05

[Endorsed]: Filed March 8, 1948.

Q. (By Mr. Scott): I show you what has been marked Plaintiff's Identification No. 6, and ask you if those entries were made by you in that book?

A. Yes.

Q. Were they made at or about the time that the expenses were incurred which the entries represent?

A. At the end of each month all of my bills were added up and entered in this book.

Q. The monthly entries were made at the end of each month? A. Yes.

Q. Made by you in the ordinary course of your operation of the cookhouse, in the ordinary course of your keeping of your books? [129]

A. It is my records to show my expenses.

Q. Entries that you made?

A. That I made.

Q. In the operation of your cookhouse?

A. Yes.

Q. So far as you know, the entries are correct?

(Testimony of Mrs. Edith LeCompte.)

A. Yes, sir.

Mr. Scott: I offer in evidence Plaintiff's Identification No. 6, this expense book.

Mr. Davidson: No objection.

(Journal of Mrs. Edith LeCompte thereupon received in evidence and marked Plaintiff's Exhibit No. 6.)

Q. (By Mr. Scott): Where did you obtain the information contained in Plaintiff's Exhibit No. 7? Where did you obtain all those figures?

A. Cash paid to me from boarders.

Q. Did you obtain it from information contained in this book, Exhibit No. 6?

A. No. Do I understand the question?

Q. I don't know whether you do or not. What I want to know is, Where did you obtain the information that you got \$191.80 in 1945? From records kept by you?

A. The number of meals from outside boarders who paid in cash.

Q. Where are the records from which you obtained that information? [130] Is that information contained in this book here, Plaintiff's Exhibit No. 6?

A. No, sir.

Q. I hand you Plaintiff's Exhibit No. 7 and ask you if you made that memorandum?

A. If I put these figures down?

Q. Yes. Are those your figures?

A. Yes; I told you a while ago I did. Still stand.

Q. At the time you put these figures down there,

(Testimony of Mrs. Edith LeCompte.)

were those figures compiled from information that had been kept by you as to your cash payments?

A. Yes, sir.

Q. At the time you put these figures on Plaintiff's Exhibit No. 7, did you know of your own knowledge that those figures were correct?

A. The amount that I received.

Q. Yes. A. Yes.

Q. You know of your own knowledge that these figures are correct as representing the cash payments you received during those years?

A. Yes, sir.

Q. The amounts shown on Plaintiff's Exhibit No. 7, do they include the amounts received solely from transients, or do they include some cash payments paid by the employees to you [131] for their own meals? A. Whose employees?

Q. Employees of the Row River Lumber Company?

A. No, sir; the Row River Lumber Company don't have anything to do with that. That is the boys I boarded from other places.

Q. The total amount of money you received from the operation of the cookhouse of the Row River Lumber Company would be the amount you received for meals shown on Plaintiff's Exhibit No. 4, together with the amount paid you by the company, plus the cash amounts shown on Plaintiff's Exhibit No. 7?

A. This right here; the Row River Lumber Company didn't pay that there.

(Testimony of Mrs. Edith LeCompte.)

Q. I am not talking about that, but I say: The amounts shown for meals entered on Plaintiff's Exhibit No. 4 are the amounts you received from the Row River Lumber Company?

A. You mean this right up here? Like this one right here, that was my check from the Row River Lumber Company. Maybe you don't understand my bookkeeping.

Q. Plaintiff's Exhibit No. 4, on Statement No. 224, the amount you received was \$926.15. Is that correct? A. Yes, that is right.

Q. Which represents the sum of the three figures here, showing the number of meals? A. Yes.

Q. Similarly, all the other statement in Plaintiff's Exhibit [132] No. 4, the amounts you received from the company are the amounts shown?

A. Yes.

Q. And when there might be some additional writing below, as for instance here (indicating), that is your writing?

A. Yes, sir. That is what I tried to make you understand. The company does not have—the company does not even know anything about that.

Q. In order to explain your bookkeeping, Plaintiff's Exhibit No. 6—I turn to Page 29, which is the account for November, 1946, and ask you if the figure \$721.26 is the amount of your expenses during that month? A. Yes, sir.

Q. And the figure below that would be your figure of how much you earned? A. Yes.

Q. And, similarly, on Page 47, that shows the

(Testimony of Mrs. Edith LeCompte.)

amount of expenses incurred by you during August, 1947, which was \$735.91? A. Yes.

Mr. Scott: That is all.

Cross-Examination

By Mr. Davidson:

Q. Mrs. LeCompte, in carrying on your business, in keeping your books, do you keep them on a strictly cash basis? In other words, you do not consider your inventories? [133]

A. Not on that book.

Q. If you bought heavily one month, your books might show a loss and, if you bought light the next month, they might show a profit? A. Yes, sir.

Q. You have no understanding as to any term of your agreement with the Row River Lumber Company, as I understand—as you testified?

A. No, sir.

Q. You would expect them to give you reasonable notice, in order to get rid of your inventory and so forth, if they were making a change, wouldn't you?

A. Yes.

Q. And you would expect to give them the same kind of notice, in order to contract with someone else, if you left? A. Yes, sir.

Q. Have you found them reasonable and co-operative to deal with? A. Yes, very much.

Q. I take it that at the present time your business is getting down to a pretty low ebb, isn't it?

A. Yes.

Q. The profit that you can make depends on the

(Testimony of Mrs. Edith LeCompte.)

prices that you can get for meals, taking into consideration the number of meals you can serve and what your food and labor costs you?

A. Yes. [134]

Q. Whatever you can do in getting more money for meals than what your food and labor costs, that is your profit? A. Yes.

Q. You are operating at all times on a definite amount per meal. Did you say that amount was agreed upon between you and the Row River Lumber Company, the amount per meal?

A. For employees?

Q. Yes.

A. Yes, sir. That was agreed by us three.

Q. Was that agreed between you—You mean between Mr. Hayes and Mr. Bebe and yourself?

A. Yes, sir.

Q. Was that price that was set agreeable to you when it was set each time? A. Yes, sir.

Q. Did you have your voice in determining what that ought to be? A. Yes.

Q. How many boarders do you think you had who were not employed by the Row River Lumber Company at the maximum time of steady work?

A. How many I have had?

Q. The most that you have had at any one time—boarders who do not work for the Row River Lumber Company?

A. At one time I think it was five, sir. [135]

Q. Five? A. Yes.

Q. According to this statement, Plaintiff's Ex-

(Testimony of Mrs. Edith LeCompte.)

hibit No. 7, which was just introduced in evidence, you had sales to persons who were not employees of the Row River Lumber Company in the amount of \$544.05 in 1947? A. Yes, sir.

Q. That would run, then, about \$45 per month at that particular time?

A. Well, it would average that.

Q. It would average that over the years?

A. Something like that.

Q. Will you explain the method that you used in advising the Row River Lumber Company office of the number of meals that they are to collect for.

A. I have a meal ticket.

Q. A meal ticket? A. Yes.

Q. Does it have the man's name on it?

A. Yes, the man signs it when he comes to the cookhouse.

Q. And you keep it there?

A. Yes, I keep a record each day.

Q. Each day? A. Yes.

Q. Do you punch the meal ticket? [136]

A. No, sir. They are just marked down and so-and-so has a meal ticket; the date and so forth is there.

Q. At the end of the month do you send them to the office?

A. At the end of the month these tickets go to the office.

Q. And that is the basis on which they make their charge to the men? A. Yes, sir.

Q. During the first month or first month and a half you were there, you drew \$200?

(Testimony of Mrs. Edith LeCompte.)

A. Yes, sir.

Q. Have you drawn any since then?

A. No, sir.

Q. Was there any money due you for meals for which the Row River Lumber Company was going to collect at the time you drew that \$200?

A. One month.

Q. You drew that in order to pay a bill contracted in your business?

A. Yes, I had a bill that I had promised to pay and I wanted to keep my word.

Q. Do you know anything about what Mr. Hayes likes to eat? A. No, sir.

Q. Do you plan your meals so there will be things that he likes? A. No, sir.

Q. Whom do you try to satisfy when you are putting out a meal? [137]

A. Everybody that eats with me.

Q. Are you concerned with satisfying anybody else? A. Oh, yes—Oh, no. I don't care.

Q. In other words, if you satisfy them, that would be a satisfactory operation of the cookhouse?

A. You mean if I satisfy whoever——

Q. If you satisfy the people that eat there.

A. Yes.

Q. If you don't satisfy them, they would not eat there? A. I don't think so.

Q. They are not compelled to eat there?

A. No, sir.

Q. You read certain parts of a statement that is handed to you. Will you tell me what that statement was?

(Testimony of Mrs. Edith LeCompte.)

A. I didn't get the question. Will you repeat it?

Q. Mr. Scott handed you a statement on yellow paper, during the course of his examination of you, and asked you if that was your statement, and you read certain parts of it. Do you remember that?

A. Oh, that I read myself?

Q. Yes.

A. Well, that paper—Mr. Faith came to the cookhouse.

Q. Who did that?

A. Mr. Faith, the gentleman here.

Q. The gentleman here? [137] A. Yes.

Q. He was an inspector for the Wage and Hour Division? A. That is what he said.

Q. What did he tell you was the purpose of that statement?

A. Well, I don't know. I couldn't figure it out. He said he was with the Wage and Hour, so I don't know for sure what it was all about.

Q. Did he tell you the Wage and Hour required a statement from you? A. I think he did, sir.

Q. Is that his language in there that you were reading? A. Yes, sir.

Q. That is what Mr. Faith wrote, is that right?

A. Yes, sir.

Q. Did Mr. Faith attempt to induce you to represent that you were an employee of the Row River Lumber Company, entitled to overtime?

A. That was the impression I got.

Q. Was it your understanding? Was that your understanding, that you were employed?

(Testimony of Mrs. Edith LeCompte.)

A. That I was employed?

Q. Yes. A. I was working for myself.

Mr. Scott: Object to that question and answer.

The Court: It may stand. [139]

Q. (By Mr. Davidson): Did you have to get the consent of the Row River Lumber Company to serve a meal to a person who is not an employee?

A. That was not an employee?

Q. Yes. Do you have to get consent from the Row River Lumber Company for that?

A. No, sir.

Q. You feed whomever you want to?

A. Yes.

Q. And what you want to feed? A. Yes.

Q. And you employ whom you want to?

A. Yes, sir.

Mr. Davidson: That is all.

Redirect Examination

By Mr. Scott:

Q. Counsel asked you if you found the Row River Lumber Company to be reasonable and co-operative in connection with your operation of the cookhouse. A. I think so, sir.

Q. I think you stated you had asked them to go to Portland or at least to get potatoes and other supplies for you from Portland, when you could not buy them down at the camp?

A. That was during the war. You do know there was a war, don't you? [140]

Q. Yes, there was a war.

A. I know meat and everything was hard to get.

(Testimony of Mrs. Edith LeCompte.)

Q. It was difficult to operate the cookhouse during the war, wasn't it?

A. It was quite hard, yes.

Q. It was quite hard? A. Yes.

Q. During the war, when it was difficult to operate the cookhouse and you found you needed some assistance in obtaining your supplies, the Row River Lumber Company was so reasonable and cooperative you felt free to ask them to get supplies for you from Portland?

A. I would hate to think the company would not stand back of me when I asked them to get me two sacks of potatoes.

Q. You would also hate to think they would not fulfill any other reasonable request you would make of them, isn't that true?

A. I think they would be fair with me.

Q. You think they would be fair with you, and you think that they would fulfill any reasonable request you would make in connection with the operation of a cookhouse? A. Reasonable?

Q. Yes. A. I think they would.

Q. When you said you and Mr. Bebe and Mr. Hayes talked over [141] the price of the meal, was the final determination made by Mr. Hayes and Mr. Bebe? A. By Mr. Hayes, I believe.

Q. The final determination was made by Mr. Hayes? A. And I agreed.

Q. And then you agreed? A. Yes.

Q. He asked you if you thought you could make a profit at that price?

(Testimony of Mrs. Edith LeCompte.)

A. I don't know whether he asked me that way or not.

Q. Who is the person that actually set the price, you or Mr. Hayes? A. Both of us.

Q. What did you ask Mr. Hayes or Mr. Bebe? If you could increase the price of meals? Did you feel you had to?

A. I like to be cooperative and they were the company.

Q. They were the company?

A. And the boys were working for the company.

Q. They were the company and the boys were working for the company?

A. And I was boarding the boys.

Q. And you were boarding the boys?

A. Yes.

Q. Mr. Hayes and Mr. Bebe had charge of the mill, is that right? A. As far as I know. [142]

Q. You did not feel you had authority on your own determination to increase the price of meals without asking Mr. Hayes or Mr. Bebe?

A. Never thought anything about it.

Q. You did not think anything about it?

A. No, sir.

Q. You said your husband helped you with the wood, bringing in the wood?

A. He carries in the wood. He don't help me. He carries it in.

Q. He carries in the wood himself?

A. Yes.

Q. And piles the wood up for you?

A. Yes.

(Testimony of Mrs. Edith LeCompte.)

Q. He works for the Row River Lumber Company? A. Yes.

Q. What does he do for the Row River Lumber Company?

A. What difference does that make with you?

Q. He is a regular employee of the Row River Lumber Company? A. Yes.

Q. I hand you Plaintiff's Exhibit No. 7 and I want to ask you a question. I don't think you understood it a little while ago. The amounts you have shown here as being cash payments besides the cash that you receive from boarders, doesn't that include any cash that the employees of the Row River Lumber Company may [143] wish to pay you rather than having a deduction made for meals?

A. Yes, that is in there, too.

Q. In other words, this Exhibit No. 7 would include cash paid you? A. All cash paid in.

Q. All cash paid in by a boarder or an employee of the Row River Lumber Company?

A. Outside boarders.

Q. Or an employee of the Row River Lumber Company?

A. Not an employee of the Row River Lumber Company. There were Youngblood and Martin; that is the only ones; that shows on that statement.

Q. I am talking about Exhibit No. 7. Exhibit No. 7, you say, includes all cash payments made to you?

A. Yes.

Q. Whether these cash payments were made to you by outside boarders or employees of Youngblood and Martin or employees of the Row River Lumber

(Testimony of Mrs. Edith LeCompte.)

Company; if it was a cash payment, it would be included on Exhibit No. 7?

A. Yes, if it was an employee of the Row River Lumber Company; but they didn't, none of them, pay me cash. It goes through the office.

Q. I hand you Plaintiff's Exhibit No. 4 and ask you again as to the statement marked No. 224, whether it shows 1,584 meals paid to you at 40 cents per meal and 1,712 meals paid to you [144] at 15 cents a meal.

A. That is Youngblood & Martin's men again. It does not say "Youngblood & Martin."

Q. Cannot an employee of the Row River Lumber Company pay you in cash?

A. They could, if they want to, yes.

Q. Do they ever do it? A. No, sir.

Q. They never do? A. No, sir.

Q. These meal tickets that you say you mark every time an employee eats in the cookhouse—who furnishes those meal tickets?

A. The Row River Lumber Company.

Q. Do those meal tickets have the name "Row River Lumber Company" written on them?

A. It is printed on them, yes.

Q. When you told Mr. Davidson that you try to have meals that satisfy the people that eat there, you also want Mr. Bebe to be satisfied the way you operate the cookhouse, don't you?

A. Yes, certainly.

Q. I hand you what has been marked Plaintiff's Identification No. 5, which you identified as a state-

(Testimony of Mrs. Edith LeCompte.)

ment signed by you, Edith A. LaCompte, isn't that correct? A. Yes.

Q. Did you read that statement when you signed it? [145] A. Yes, sir, I read it hurriedly.

Q. Last Friday did I not call on you and present this statement to you and let you read it and ask you if it was still your statement?

A. Yes, I believe you did.

Q. And you said it was still your statement, last Friday?

A. I think I did, because I was tired and I didn't care.

Q. Mr. Faith wrote that, is that right, the inspector sitting at my table, Inspector Faith?

A. It looks like the one he wrote.

Q. And he asked you to sign it?

A. Yes, he did.

Q. He didn't tell you you had to sign it?

A. Oh, no. I wasn't forced to sign it. Maybe I signed it to get rid of him.

Q. He didn't tell you that he had a legal right to force you to sign it, did he?

A. I don't think so. He told me he was with the Hour and Wage Law.

Q. Yes, ma'am. He told you he was an inspector with the Wage and Hour Division, United States Department of Labor? A. Yes, that is it.

Q. And you told Mr. Faith, "It is my understanding that the cookhouse and dining room must be operated to the satisfaction of Mr. Hayes and Mr.

(Testimony of Mrs. Edith LeCompte.)

Bebe whom I consider as my bosses," is that [146] right? A. I think that is right.

Q. Is that still your statement?

Mr. Davidson: I am going to object to that. Certainly he is trying to impeach his own witness, if the Court please. I think it is entirely inadmissible.

The Court: Sustained.

Mr. Scott: That is all.

Recross-Examination

By Mr. Davidson:

Q. Do you buy from salesmen who come through at the Row River Lumber Company mill for your cookhouse? A. Yes, partly.

Q. During the war, when things were hard to get, did you ask them to help you in the situation?

A. The salesmen, you mean?

Q. Yes; did they help you?

A. You bet they did.

Q. The same as the Row River Lumber Company helped you? A. Yes.

Q. Mrs. LeCompte, wasn't it your understanding, under the agreement, that the Row River Lumber Company was to furnish everything but the food and the labor? A. Yes.

Q. You said under the agreement the Row River Lumber Company [147] was to furnish everything for the cookhouse, is that right? A. Yes.

Q. Except food and labor?

A. That is right.

Q. So it was in accordance with that agreement that they furnished these meal tickets, is that correct? A. Yes, sir.

Mr. Davidson: That is all. [148]

(Witness excused.)

MRS. IDA GAROUTTE

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. Mrs. Garoutte, did you at one time serve as cook in the cookhouse of the Row River Lumber Company? A. Yes.

Q. Do you know what time it was you served there as cook? A. October, '42.

Q. To when? A. To May 1st of 1945.

Q. Who hired you?

A. Well, I wouldn't say just who hired me. Mr. Hayes and I talked it over and I told him—well, he was looking for a cook in the cookhouse. And I was cooking for Mrs. Thomason, and I told him if he would like to have me there in the cookhouse I would take it over for him, if it was satisfactory to him.

Q. Was there any written agreement between you? A. No.

Q. There was no written agreement?

A. No.

Q. In the agreement you had, that was oral, was there any certain time set that the agreement should run? A. No, sir. [149]

Q. Was any provision made, or was there any mention made at the time the agreement was made as to how your services would be terminated?

A. No, sir.

Q. No certain notice was necessary by the com-

(Testimony of Mrs. Ida Garoutte.)

pany to terminate your services? A. No.

Q. Could you have resigned your services at any time you wanted to?

A. I suppose I could, as I was working for myself. I suppose I could.

Mr. Scott: I would like to strike the last answer as not responsive.

The Court: The answer may stand.

Mr. Scott: Q. What was your duty under the arrangement you had with Row River Lumber Company?

A. I was just to do the cooking for the men employees.

Q. Were you to serve meals to all employees of the Row River Lumber Company who would choose to eat at the cookhouse? A. Yes.

Q. Did you serve any meals to transients?

A. Oh, a few.

Q. About how much per month would you obtain from meals served transients?

A. Oh, I could not tell you just exactly. [150]

Q. What is that?

A. I could not tell you exactly what it would be because maybe some months there would not be any there.

Q. Would it ever be more than \$10?

A. Oh, I don't think so. A month, you mean?

Q. Yes, \$10 a month?

A. No, I don't think so.

Q. I hand you, Mrs. Garoutte, what has been marked as Plaintiff's Exhibit No. 3.

(Testimony of Mrs. Ida Garoutte.)

A. I can't read without taking my glasses off or looking over them.

Q. You do not have to read that first one. I hand you two statements out of Plaintiff's Exhibit No. 3, one with the number 4894 on it, dated March 13, 1945, and another one with the number 4924 on it, dated April 12, 1945.

I will read that for you, since you say you have difficulty reading yourself. The first one with the number 4894 on it shows an entry: "128 meals at 10 cents, \$12.80, bonus on Burrell & Renninger," and then it has this note: "Mrs. Garoutte: We could not collect from Douglas Burrell (\$10) and William Renninger (\$41.20). Will you please collect it from the men down there."

A. They paid me that.

Q. The two men came and paid you the money shown here? A. Yes. [151]

Q. Douglas Burrell paid you \$10 and Renninger paid you \$41.20, but the company paid you a bonus for those meals amounting to \$12.80?

A. Yes.

Q. Statement No. 4924 has this entry: "105 meals at 10 cents, \$10.50, bonus on Renninger", and then the note: "We were unable to collect 105 meals at 40 cents—\$42.00—from William Renninger. Will you please collect it from him down there."

A. The same thing.

Q. Did you collect \$42.00 from Mr. Renninger?

A. Yes.

Q. But, although the company did not make a deduction from Mr. Renninger's wages, they, never-

(Testimony of Mrs. Ida Garoutte.)

theless, paid you the 10-cent bonus for 105 meals, is that correct?

A. That is what it says there, isn't it?

Q. That is what the statement shows. Your answer is yes?

A. It is just as you read it there. It is right there in black and white.

The Court: Adjourn until tomorrow morning at 9:30.

(Thereupon at 5:30 o'clock p.m. an adjournment was taken until 9:30 o'clock a.m. Friday, March 5, 1948.) [152]

Court reconvened at 9:30 o'clock a.m., Friday, March 5, 1948.

Mr. Davidson: It is stipulated by the parties that the original cost in 1942 of labor, lumber and so forth for the construction of the cookhouse was \$1,986.88; that there was an addition in 1946 at a total cost of \$416.95; and there were repairs in 1947 in the amount of \$312.33.

It is further stipulated that the cost of the original equipment of the cookhouse was \$72.93; that there was a further addition of equipment in the year 1946 of \$129.34; and further additions to equipment in the year 1947 of \$887.87, which includes a refrigerator at a cost of \$797.92.

Mr. Scott: I would like to state in the answers to the interrogatories the amount \$312.33 is shown as being expended in 1946, but Mr. Davidson just said it was spent in 1947. I just make that statement to clear up the record.

MRS. IDA GAROUTTE,

having been previously duly sworn, resumed the stand and further testified as follows:

Direct Examination—(Continued)

By Mr. Scott:

Q. Mrs. Garoutte, during the time you were the cook at the cookhouse of the Row River Lumber Company, did the company furnish free to you, without any charge, the cookhouse consisting [153] of the kitchen, dining room and living quarters for you and the kitchen help? A. Yes, sir.

Q. Did the Row River Lumber Company furnish free to you all equipment that was necessary for the operation of the kitchen and the dining room?

A. Yes, sir.

Q. Did the Row River Lumber Company furnish the equipment in your living quarters?

A. No, sir.

Q. Did they furnish any of that equipment?

A. No, sir.

Q. Did you furnish all of that equipment in the living quarters yourself? A. Yes, sir.

Q. When you were originally hired—I think you said you made your oral agreement with Mr. Hayes—was anything said about whether you would be an employee or a contractor with the company?

A. No, sir.

Q. During the time you were the cook at the cookhouse of the Row River Lumber Company do you recall approximately how many hours a week you worked?

Mr. Davidson: We object to that, if the Court

(Testimony of Mrs. Ida Garoutte.)

please. Mrs. Garoutte has been gone since May 1, 1945. She is not there [154] any more, and this testimony is irrelevant.

The Court: Admitted, subject to the objection.

Mr. Scott: Q. Do you recall approximately how many hours you worked?

A. No, I couldn't tell you how many hours I worked.

Q. Did you work over 40 hours a week, would you say?

A. I wouldn't say that I did because I never kept any track of it, and I cannot recall back that long and tell you how many hours I worked or didn't work. I just really couldn't tell you right out.

Q. Can you recall when you started work in the morning to prepare the morning meal?

A. Some mornings it would be earlier than others. Some mornings I would not be there so early. If we did not have many to cook for, I did not have to get up so early. If I had more, I had to get up earlier. We served breakfast at 6:00 o'clock when I started in there.

Q. You served breakfast at 6:00 o'clock?

A. When I started in there, yes. Later on I commenced serving at about 6:30, if I remember right. They had it a half hour later, I think it was.

Q. When breakfast was served at 6:00 o'clock, what time would you have to start work to be able to serve breakfast at that time?

A. Well, depended on what a person was going to serve and how [155] quick it would take to serve it, and if it was for very many it would take—

(Testimony of Mrs. Ida Garoutte.)

Q. You at least began work at 6:00 o'clock at the time breakfast was served, then; would that be true? A. The cook, you mean?

Q. Yes. If you served breakfast at 6:00 o'clock, you would be working by 6:00 o'clock, at least?

A. Yes, certainly.

Q. Do you know how long you continued to work then?

A. Well, if I had a big crew it kept me busy all the forenoon.

Q. Would that be up to 12:00 o'clock that you worked if you had a big crew?

A. Well, around that time.

Q. What time was lunch served, do you recall?

A. At 12:00 o'clock.

Q. Then would you continue at 12:00 o'clock to serve lunch and continue to work after 12:00 serving lunch?

A. Well, I helped with the serving, yes.

Q. How long would you work, serving lunch?

A. Well, I don't know.

Q. What time would you quit?

A. Well, it would be a half hour before they would be through.

Q. You say a half hour before they would be through. You mean the employees would eat lunch from 12:00 to 12:30?

A. About that time. They would go that long before we got the [156] tables cleared up.

Q. How much longer would you have to continue working to get the lunch dishes off the table and the dishes washed or whatever else you did?

(Testimony of Mrs. Ida Garoutte.)

A. I did not do the dishwashing. I put the food away after the meal was over with.

Q. When would you stop putting the food away after the noon meal?

A. That did not usually take me very long to put the food away. I couldn't say just offhand how long it was.

Q. Well, would you work until 1:00 o'clock or 1:30, putting the food away?

A. Well, naturally, when lunch was over and the food was put away, we would eat our lunch during that time, too. It was around 1:00.

Q. About 1:00, is that what you say, when you had finished your lunch?

A. Yes, I would say that.

Q. Well, when would you begin work preparing the evening meal?

A. Well, usually around 4:00, if they had a big crew. If they didn't, you know—

Q. Yes, ma'am. If they had a big crew, it would be about 4:00 o'clock.

A. Yes, if we had a full crew. When I first went in there, we didn't have only one table for a while. I don't remember [157] when we did put in the other table.

Q. Yes, ma'am. How many tables did they have? What was the greatest number of tables they had while you were cook there?

A. Three tables, and they seated eleven at a table, I believe it was.

Q. When you had a large crew and you began

(Testimony of Mrs. Ida Garoutte.)

preparing the evening meal at 4:00 o'clock, when would you finish that evening meal and be through for the day?

A. Well, I always put up the lunches while the girl washed the dishes.

Q. Yes, ma'am. Including the time you spent putting up the lunches, when would you be through for the day? A. Around 8:00 o'clock.

Q. How many days a week would you work those hours? Was the cookhouse open seven days a week?

A. Saturdays and Sundays I hardly ever hired anybody but I did the work myself mostly on Saturdays and Sundays.

Q. How many hours did you work on Saturday and Sunday, the same number you just stated?

A. Oh, no. Oh, no. I wouldn't work that much over the week end. This has been back three years. My memory isn't so good.

Q. Yes, ma'am.

A. It is not as good as it was then. Then I didn't try to remember these things.

Q. How many hours less did you work on Saturday and Sunday [158] than you worked on a week day, do you recall? Was it two or three or four?

A. Some week ends I don't think I worked over six hours a day, and there might be two or three there on a week end.

Q. Would you say you would work at least six hours on Saturday and Sunday on a week end?

A. I imagine I did, because there were other things I had to do, too.

(Testimony of Mrs. Ida Garoutte.)

Q. Yes, ma'am. Do you recall how many hours the waitress worked?

A. No, I never kept track of the hours because I paid by the month, but they never put in the hours that I did.

Q. In addition to the money that you were paid by the Row River Lumber Company, at so much each meal, so much per meal, did you ever receive any extra compensation as overtime for working in excess of 40 hours a week?

A. No, just what I made off the food, buying the food.

Q. Did you keep a record of the hours you worked each day and each week?

A. No, sir, I didn't think I had to.

Q. You never turned a record of those hours in to the Row River Lumber Company?

A. No. No, sir.

Q. Under your oral arrangement with Mr. Hayes, was it provided you would select this help in the kitchen? [159]

A. There was nothing said about that.

Q. There was nothing said about that?

A. No, sir.

Q. Was anything said about whether he should pay the help you had in the kitchen?

A. No, sir.

Q. While you were cook at the Row River Lumber Company, did you ever take a vacation?

A. I took a vacation in the hospital a time or two.

Q. Was that the only time you were ever off

(Testimony of Mrs. Ida Garoutte.)

from your responsibilities of acting as cook, when you were in the hospital?

A. Oh, I was off once and went to the Coast for a couple of days, when there was nobody there to cook for.

Q. During the last month you were cook at the Row River Lumber Company, which I think would be April, 1945, were you sick during that month?

A. Yes, I was in the hospital two weeks.

Q. The rest of the time during that month, when you were not in the hospital, were you acting as cook down there?

A. Yes, I was.

Q. You were cook down there?

A. Yes, sir. I wasn't in the hospital all the month.

Q. While you were in the hospital did you make arrangements for a substitute to cook for you?

A. Yes. [160]

Q. Did you pay the substitute during the time she was cooking?

A. Yes.

Q. Did you have to get the approval of Mr. Hayes or Mr. Bebe for the person you chose as a substitute for you?

A. No, sir.

Q. The cook's duties just passed from you over to your substitute, without any intervention by the company?

A. Yes, sir.

Q. Who was the cook you selected during the time you were in the hospital, do you recall?

A. Mrs. Margaret Cooper.

Q. During the time you were cook for the Row River Lumber Company, did you work in any other position other than cook at the cookhouse?

(Testimony of Mrs. Ida Garoutte.)

A. No, sir.

Q. How long did Margaret Cooper serve as your substitute cook, do you recall?

A. She was cook just while I was in the hospital, the two weeks I was in the hospital, but she helped me out, outside of that, though I can't recall how long she helped me; but I was in the hospital two weeks.

Q. The only money you received from the Row River Lumber Company, then, was the agreed price per meal, is that correct? A. Yes, sir.

Q. When you were cook at the Row River Lumber Company, did you [161] cook regularly and constantly each day and each week?

A. Yes, only the time I was in the hospital.

Q. During the time you were cook at the Row River Lumber Company, you did not cook for any other camps?

A. No, sir. I don't know how I could. One was enough.

Q. During the time you were cook at the Row River Lumber Company, did you hold yourself out to other camps as being in the market for a contract to cook for them. A. No, sir.

Q. When you first went to work as a cook, you did not agree to work for a specific season or a specific year or a specific length of time?

A. No, sir.

Q. When you were cook, you were the only cook there? A. Yes, sir.

Q. How many kitchen helpers did you have at one time?

(Testimony of Mrs. Ida Garoutte.)

A. Only had one at a time.

Q. Would you say, Mrs. Garoutte, that a person with an ordinary knowledge of cooking that one could obtain in the kitchen of a home could serve as a cook in a cookhouse and particularly as a cook in the cookhouse of the Row River Lumber Company? A. Yes.

Q. Your answer is Yes? A. Yes.

Q. Speak loud so the Reporter can hear you.

A. Yes.

Q. You say Yes, that such a person could be a cook at the cookhouse of the Row River Lumber Company? A. Yes, sir.

Q. Did you have any other responsibilities whatsoever while you were cook there, other than purchasing the food and preparing the food?

A. No, sir.

Q. While you were the cook at the cookhouse of the Row River Lumber Company I think you said you got about \$10 or \$15 a month from transients that you would feed.

A. Well, I couldn't say just what it was, but I imagine it would average up to about that.

Q. Other than those transients that you fed, getting that amount of money, were all the other persons that ate at the cookhouse employees of the Row River Lumber Company?

A. Yes, sir.

Q. Did you ever charge an employee of the Row River Lumber Company more than the agreed price per meal? A. No, sir.

(Testimony of Mrs. Ida Garoutte.)

Q. Then the amount you would make in operating the cookhouse would be limited by the agreed price per meal that you could charge the employees?

A. Yes, sir.

Q. While you were the cook of the Row River Lumber Company, [163] was the cookhouse to the general consuming public?

A. No, I wouldn't say that it was.

Q. While you were cook at the Row River Lumber Company, was it part of your work as cook to prepare lunches for the logging employees to take to the woods with them?

A. Was it part of my work?

Q. Yes, ma'am.

A. Yes. That was their meal. I had that to prepare.

Q. Talk louder.

A. It was a meal they had to have in the woods and it had to be prepared.

Q. It was part of your work to prepare it?

A. Yes, certainly.

Q. While you were the cook at the Row River Lumber Company, did the Row River Lumber Company furnish all the light, water and fuel necessary for the operation of the cookhouse?

A. Yes, sir.

Q. During the time you were the cook, do you recall how much you were paid per meal? Wasn't it 50 cents you were paid per meal? A. Yes.

Q. When the original agreement was made between you and Mr. Hayes, did Mr. Hayes tell you

(Testimony of Mrs. Ida Garoutte.)

that would be the amount the company would pay you? A. I don't recall him saying that. [164]

Q. How do you know that was the amount?

A. Well, I cooked for Mrs. Thomason for some men before I took over in the cookhouse, and that is the price that was being paid and that is the price I——

Q. In other words, you knew the company was paying 50 cents a meal? A. Yes.

Q. And that was the amount that you knew that they would pay you? A. Yes.

Mr. Scott: That is all.

Cross-Examination

By Mr. Davidson:

Q. Did you work for Mrs. Thomason from the time she started in August, 1940?

A. No, I didn't cook for her from the time she started.

Q. When did you start there, about?

A. I don't know as I could tell you.

Q. Where did Mrs. Thomason conduct her cookhouse? A. In her own home, her own place.

Q. The company did not own that property?

A. No, sir.

Q. Did you understand while you worked for Mrs. Thomason what arrangement she had with the company for collecting for the meals and so forth?

A. Well, I never inquired into her affairs or anything of the sort.

Q. When you took over the cookhouse from Mrs. Thomason, did you understand that the arrangement

(Testimony of Mrs. Ida Garoutte.)

was just the same, except that the company was going to furnish you a place and equipment?

A. Yes.

Q. Was that the understanding? A. Yes.

Q. Did you understand with Mr. Hayes that whatever you made out of it was to be the difference between your cost of the food and what you would collect for the meals? A. Yes.

Q. Did you understand that your situation was to be the same as Mrs. Thomason's in that regard?

A. Yes.

Q. Did Mr. Hayes, or any other representative of the company, tell you what you had to cook?

A. No, sir.

Q. You planned all your own menus?

A. Yes.

Q. You purchased your own food?

A. Yes, sir.

Q. It is true, then, that the amount you got depended upon the price that you could get for the meals, also depended on the cost of the food and how many people you could serve? [166] A. Yes sir.

Q. Did you have any understanding that you were to get anything different from that?

A. No, sir.

Q. Was there any understanding that you would be paid by the hour? A. No, sir.

Q. Or any minimum rate? A. No, sir.

Q. Have you ever made any claim for overtime compensation?

A. No, sir. I was working for myself.

Q. Did you talk to Mr. Faith about making such a claim? A. Who?

(Testimony of Mrs. Ida Garoutte.)

Q. To Mr. Faith, the examiner here?

A. About making such a claim as that?

Q. Yes. A. No.

Q. Did he talk to you about it? A. No.

Q. Have you made any statement to Mr. Faith, any signed statement?

A. Yes. He asked me questions up there and I answered to the best of my ability, but there was nothing in it like that.

Q. When you had this substitute, did you give the necessary instructions to her as to what to do while you were gone, in [167] the hospital?

A. Well, she knew what to do, to just take over my cooking, that is all.

Q. Did anyone in the company give her any instructions? A. No, sir.

Q. You arranged with her what you should pay her? A. Yes, sir.

Q. Isn't it true that your profit would be more if you were able to buy properly and carefully and store the food properly?

A. Why, certainly, a person naturally would make more.

Mr. Davidson: That is all.

Redirect Examination

By Mr. Scott:

Q. Mrs. Garoutte, you said you had worked in the cookhouse under Mrs. Thomason when Mrs. Thomason was feeding the employees of the Row River Lumber Company. Is that correct?

A. Yes, sir.

Q. Then, when you say that Mr. Bebe did not

(Testimony of Mrs. Ida Garoutte.)

instruct you as to what meals to prepare, and that you prepared your own menus, you knew from experience how to operate the cookhouse?

A. Well, I operated them before that, and I never was turned out or anything.

Q. From your experience in operating cookhouses, you did not need any instructions from Mr. Bebe as to what meals you should serve? [168]

A. I don't think I needed any instructions from him. I never got any, either.

Q. Of course, it is true, Mrs. Garoutte, that when you would buy groceries in large amounts you would buy at a discount. It is true, isn't it?

A. Yes, sir.

Q. It is also true you could charge employees of the Row River Lumber Company only the agreed price of the meal? Is your answer yes?

A. Ask that over again, please.

Q. You could charge the employees of the Row River Lumber Company only the agreed price per meal?

A. I never charged them any more. That is just what they were paying when I took it over, and that is what I got.

Q. It was your understanding that is what you should charge, the agreed price per meal?

A. To tell you the fact, there was nothing said between me and the company about that.

Q. By charging the employees only the agreed price per meal, that would limit the amount of money you could make off of the employees eating at the cookhouse?

(Testimony of Mrs. Ida Garoutte.)

A. The price that I got was all I could figure on making.

Q. Of course, I realize the more employees you have the more money you are going to make.

A. Certainly. [169]

Q. As a total sum?

A. Certainly, yes, sir.

Mr. Scott: I guess that is all.

Mr. Davidson: That is all.

(Witness excused.) [170]

MARGARET COOPER

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. Mrs. Cooper, did you ever serve as cook at the cookhouse of the Row River Lumber Company?

A. Yes.

Q. Would you state during what periods you were the cook?

A. I don't know the exact dates. I know I quit the first day of May.

Q. Were you the cook at the cookhouse during the time Mrs. Garoutte was ill? A. Yes.

Q. Prior to that time, did you serve as cook while Mrs. Garoutte was ill, immediately prior to that time, that is? Immediately prior to that time, had you served as Mrs. Garoutte's helper in the cookhouse? A. Yes, sir.

Q. When Mrs. LeCompte became cook May 1,

(Testimony of Margaret Cooper.)

1945, did you continue as Mrs. LeCompte's helper for a while? A. I stayed for a very few days.

Q. During the time you were cooking, did Mrs. Garoutte pay you? A. Yes.

Q. How much did she pay you, do you recall?

A. Well, for cook or helper?

Q. Cook?

A. I got \$300 for the time I cooked.

Q. How much did you get for your services as a helper? A. \$100 a month.

Q. Did Mrs. Garoutte, to your knowledge, get the approval of Mr. Hayes and Mr. Bebe when you were serving as substitute cook?

A. Not that I know of.

Q. During the time you were cook, did you ever receive any instructions from Mr. Hayes or Mr. Bebe? A. No.

Q. Who helped you with the cookhouse during the time you were cook? A. Mrs. McCormick.

Q. Did you hire Mrs. McCormick?

A. No.

Q. Did you pay Mrs. McCormick? A. No.

Q. Do you know who did hire Mrs. McCormick?

A. That I couldn't say.

Q. Do you know who paid Mrs. McCormick?

A. No.

Q. Did Mr. Hayes or Mr. Bebe ever say to you, while you were cook there, that if you needed any extra help they would see that you got it? [172]

A. Mr. Hayes did, at one time.

Q. Just what did Mr. Hayes say?

A. He just said if I thought I couldn't handle it he would be glad to get somebody to help me.

(Testimony of Margaret Cooper.)

Q. Did you find it necessary to ask Mr. Hayes to get somebody to help you? A. No.

Q. During the few days you stayed on as a helper to Mrs. LeCompte, did Mr. Hayes or Mr. Bebe ever come to the cookhouse and criticize the way Mrs. LeCompte was operating the cookhouse?

A. That I couldn't say. Mr. Bebe and his wife came over one evening while I was there.

Q. Do you know the purpose of their visit?

A. No, I don't.

Q. Did Mr. Bebe talk to Mrs. LeCompte about complaints he had received from men about lunches not being large enough?

A. They were in a different room from where I was, so I don't know what they said. I was doing dishes at the time.

Q. Do you know whether Mr. Bebe was criticizing the way Mrs. LeCompte was running the cookhouse? A. I really couldn't say.

Q. Did you overhear any conversation whatever between Mr. Bebe and Mrs. LeCompte?

A. No, sir.

Q. Did Mrs. LeCompte later tell you what the conversation was [173] between the two?

A. No.

Mr. Scott: That is all.

Cross-Examination

By Mr. Davidson:

Q. Mrs. Cooper, did you understand when Mrs. Garoutte hired you to take her place that you were working for her? A. Yes.

(Testimony of Margaret Cooper.)

Q. Did you understand that she was going to pay you? A. Yes.

Q. And that the profit that you made, if any, while you were there was her profit? A. Yes.

Mr. Davidson: That is all.

(Witness excused.) [174]

FRANCES McCORMICK

was thereupon produced as a witness on behalf of the plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. Did you ever work at the cookhouse of the Row River Lumber Company? A. Yes.

Q. At what time, if you recall?

A. No, I don't. I just remember I helped Ida for a day or two when she was there, and I did go in and help Mrs. Cooper while she was sick.

Q. You helped Mrs. Cooper while Mrs. Garoutte was sick, while Mrs. Cooper was cook there?

A. Yes.

Q. During Mrs. Garoutte's illness?

A. Yes.

Q. Who asked you to help Mrs. Cooper?

A. Well, Mrs. Garoutte actually asked me to help Mrs. Cooper. She told Mr. Hayes she had to give up the cookhouse because she was sick, so he said, "Couldn't you get somebody else in your place?" And she said, "No." "Well," he said, "maybe Mrs. McCormick would do it," and she said, "Well, if she

(Testimony of Frances McCormick.)

would do it, well, then I would be satisfied to keep it until she gets back," so Mr. Hayes told my husband to call me, and I [175] went down and talked to Ida and Mrs. Cooper, and I took it over—Mrs. Cooper was to do the cooking and baking, because I can't bake, and I was to help whenever I could.

Q. Did you talk to Mr. Hayes before you went there?

A. No, I didn't talk to Mr. Hayes at all.

Q. Who paid you during that time?

A. Mr. Hayes.

Q. How much did Mr. Hayes pay you, do you recall?

A. No, I don't; it was somewheres around \$300.

Q. Were you paid in cash or were you paid in check, by check of the Row River Lumber Company?

A. I got a check.

Q. You were paid by check. Was it a check with the name "Row River Lumber Company" printed on it?

A. I couldn't say. It was so many years ago I don't remember.

Q. Do you know if the check was drawn by the Row River Lumber Company?

A. Well, it had Mr. Hayes' signature on. I don't know, but I think it was a Row River Lumber Company check.

Q. The answer is yes, then? A. Yes.

Q. You will have to say yes. Were you paid that \$300 as salary or on an hourly rate?

A. Well, I told him about how many hours I worked, so he gave me a check for it. [176]

(Testimony of Frances McCormick.)

Q. How many hours did you tell him you had worked per week?

A. I didn't count the week—I just estimated for a full month.

Q. You said a full month. Did you work there for a full month or for two weeks?

A. No, Margaret and I were there about a month, because we had to stay until Mrs. LeCompte got up there.

Q. You stayed there a day or two after Mrs. LeCompte was there?

A. No, because Mrs. LeCompte did not come until Ida decided she was not able to come back.

Q. Then you and Mrs. Cooper were in the cookhouse during the two weeks Mrs. Garoutte was in the hospital and stayed on about two weeks longer until Mrs. LeCompte could come down there?

A. We were there about a month.

Q. During the time you worked in the cookhouse with Mrs. Cooper, did you work over 40 hours a week?

A. Well, I expect I did. We worked until we got the work done. We had quite a large crew at that time.

Q. You would say you worked how long?

A. Oh, I don't know. I would say about ten or eleven hours a day.

Q. For how many days a week?

A. Well, seven days a week. Wasn't nobody else to do it.

Q. When Mr. Hayes paid you that \$300, did he

(Testimony of Frances McCormick.)

pay you any [177] extra compensation as overtime for work in excess of 40 hours a week?

A. There was no question of overtime because I was working for Mrs. Garoutte.

Q. But Mrs. Garoutte never paid you your money, did she?

A. No, but I took my orders from her just the same.

Q. Do you know whether the Row River Lumber Company paid social security taxes on the \$300 that they paid you?

A. I don't know about the social security. I don't think so. I don't know what they did because I did not have a social security card for a month, so I didn't get paid for about a month.

Q. Did the Row River Lumber Company withhold taxes on that \$300? A. Yes.

Q. Did the Row River Lumber Company pay unemployment insurance on that \$300?

A. I don't know. I didn't check it over at all. All I got was a check and a withholding statement.

Q. Did the company hold up your check until you could get a social security card? A. Yes.

Q. Who told you the company was holding up your check until you could get a social security card?

A. I got a notice from an office here in Portland.

Q. That is, the office of the Row River Lumber Company? A. Yes.

Q. During the time you worked with Mrs. Cooper and at other times when you helped in the cookhouse of the Row River Lumber Company, did you keep

(Testimony of Frances McCormick.)

any record of hours you worked, daily or weekly hours? A. No.

Q. Did you ever send such a record in to the company?

A. I couldn't have, if I didn't keep any. No.

Mr. Scott: Your witness.

Mr. Davidson: That is all.

(Witness excused.) [179]

C. J. SHOBERG

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. Mr. Shoberg, are you employed by the Row River Lumber Company at the present time?

A. Yes.

Q. In what capacity? A. Timekeeper.

Q. In your capacity as timekeeper, do you work in the office of the company at its mill?

A. At the Row River Lumber Company, yes.

Q. In your duties as timekeeper, you do more than just keep the time? A. Yes.

Q. What do your duties consist of?

A. Part of the time I do other things besides that. I do buying and am the purchasing agent; look after the office to see that all of the work is turned in to Portland, to the Portland office and that it gets there on time, in the regular time so they can do their work.

Q. Then you are really manager of the office at the mill? A. You are putting it pretty steep.

(Testimony of C. J. Shoberg.)

Q. How long have you been pursuing these duties in the office [180] at the mill?

A. I believe it was in November, 1941.

Q. During the war, when rationing was in effect, did you ever have occasion to make application to the rationing board for supplemental rations for use in the cookhouse of the Row River Lumber Company?

A. Yes, sir.

Q. In whose name did you make that application?

A. Row River Lumber Company, and I signed it myself.

Q. When you say you signed it yourself, you signed your name?

A. That is right.

Q. You made the application in the name of the Row River Lumber Company?

A. Yes, sir.

Q. Did you talk to Mr. Hayes and Mr. Bebe about making that application?

A. I believe Mr. Bebe and I talked it over. I don't recall the circumstances right now.

Q. The purpose of that application for supplemental rations was to get extra rations for the woods crew of the Row River Lumber Company, is that correct?

A. That is right, sir.

Q. And the supplemental rations were to be used in the cookhouse of the Row River Lumber Company?

A. Yes, sir. [181]

Q. To feed the employees of the Row River Lumber Company, working in the woods?

A. Yes, sir.

Mr. Scott: Your witness.

(Testimony of C. J. Shoberg.)

Cross-Examination

By Mr. Davidson:

Q. Did you handle the transactions between the cookhouse operator and the company?

A. Yes, sir.

Q. Did you handle the deductions made on the payroll for meals for the men? A. Yes, sir.

Q. Do you handle any deductions on the payroll for store bills? A. Yes, sir.

Q. Who operates the store at Row River?

A. I. Humphrey.

Q. Does the company have anything to do with it?

A. No.

Q. Is it on company land? A. No, sir.

Q. Do you have a standing arrangement with the operator of that store that you will honor and deduct on the payroll any charges made by employees? A. Not that I know of, sir. [182]

Q. You do it, though?

A. It was done when I came into the office and has been carried on since.

Q. Is there an operator of bunkhouses where single men stay at Row River?

A. The same man, I. Humphrey.

Q. How many men stay in these bunkhouses?

A. He has room, I imagine, for eight or ten.

Q. Does he collect for those through company payroll deductions? A. Some of them, yes.

Q. Those that he collects for, you withhold from the men? A. That is right, sir.

Q. Are those bunkhouses on company land?

A. No, sir.

(Testimony of C. J. Shoberg.)

Q. Does the company own any part of it?

A. No.

Q. You assisted in this application for rationing. Was it not true that in order to get those additional rations application had to be made by a company employing men doing logging and other heavy work?

A. That is right, sir.

Q. And for that reason you made it?

A. Yes.

Q. Were you requested by the cookhouse operator to make that request? [183]

A. Yes, after I had informed her that it was possible to get them. I think I found out from the rationing board myself.

Q. Was it up to her whether you would ask for them or not, whether she wanted them?

A. I don't recall, sir. I think there was a circular that came around, and it was claimed you could get them if you wished.

Q. You called her attention to that circular, and she decided she would like to take the benefit of it?

A. That is right. We needed them, sir.

Q. Is it your duty to keep a record or at least compile a record of the employees at the mill, as to the hours worked?

A. Yes, sir.

Q. Did you or do you compile any such record as to Mrs. Garoutte, Mrs. LeCompte or their various helpers?

A. No.

Q. Do you consider them employees?

A. No, sir.

Mr. Davidson: That is all.

(Testimony of C. J. Shoberg.)

Redirect Examination

By Mr. Scott:

Q. Mr. Shoberg, you said you made the application for these supplemental rations because you needed them? A. That is what I said.

Q. They were needed in the operation of the cookhouse for these [184] woodsmen?

A. That is right, sir.

Q. And you made the application yourself in the name of the Row River Lumber Company?

A. Pardon?

Q. I say, you made the application yourself in the name of the Row River Lumber Company for these woodsmen employed by the Row River Lumber Company? A. Yes, sir.

Q. And for the benefit of the cook?

A. Yes.

Q. Of course, if the cook had enough ration points without the supplemental rations, it would not have been made?

A. Yes, but you could not ration the meat up at the cookhouse. They just sat down and they wouldn't take the portions of meat they were supposed to during the war but would fill their plates, and the result was they did allow more meat points and sugar points for loggers. In their heavier work, they claimed they needed it.

Q. Maybe you can clear up a point. I hand you Plaintiff's Exhibit No. 4 and ask you if you are familiar with those statements and know what they represent?

(Testimony of C. J. Shoberg.)

A. Yes, I do. They are made out from my statements that I send in.

Q. I show you a statement contained in Exhibit 4 with the [185] number 224 on it, dated 2/12/46, and call your attention to the fact that more meals were paid for at the 15-cent bonus rate than for which the 40-cent deduction was made. I will ask you why there is a larger figure for the bonus payment than for the deduction payment?

A. There probably is a reason but I can't tell you. If I had my original records, I would probably have a reason for writing it that way.

Q. Isn't it the reason that the employees of the Row River Lumber Company can pay this part of the cost of the meals in cash directly to the cook?

A. That could be the reason, but that is not the reason. They don't pay cash.

Mr. Scott: That is all.

(Witness excused.) [186]

JOHN A. LANCASTER

was thereupon produced as a witness on behalf of plaintiff and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. Mr. Lancaster, are you employed by the Row River Lumber Company at the present time?

A. I am.

Q. How long have you been employed by the company?

(Testimony of John A. Lancaster.)

A. Since November, about the 15th.

Q. What work do you perform for the company?

A. Set chokers in the woods.

Q. Are you married? A. Yes.

Q. You are? A. Yes.

Q. At the present time do you live in your home or do you live in a bunkhouse?

A. I live in a bunkhouse.

Q. Is that the bunkhouse that is owned and operated by the Row River Lumber Company?

A. It is.

Q. Do you eat all your meals in the cookhouse of the Row River Lumber Company?

A. All except my dinner. [187]

Q. You have your dinner prepared for you by the cook to take in the woods with you?

A. I did until just recently; been putting up my own lunch the last few weeks, two or three weeks.

Q. How much are you charged per week for living in the bunkhouse? A. \$2 a week.

Q. Are those charges deducted from your wages that you have due you from the company?

A. Yes.

Q. Is the cost of the meals that you eat in the cookhouse of the Row River Lumber Company deducted from the wages that you earn?

A. Yes, sir.

Q. Will you be able to work for the Row River Lumber Company if it were not for the cookhouse and the bunkhouse of the company at the mill?

A. No, I don't suppose I would, but I ain't so I would have to work there, because I would not work

(Testimony of John A. Lancaster.)

there if they did not have them. I would go other places and work just as well.

Q. You would not work for the Row River Lumber Company if you could not sleep in the bunkhouse and eat in the cookhouse?

A. I wouldn't say that. There is another bunkhouse you can always sleep in, but no other place to eat.

Q. There is no other place to eat except in the cookhouse? [188] A. That is right.

Q. Would you have to stay either in the bunkhouse of the company or this other bunkhouse?

A. Yes.

Q. That some other person owns there?

A. Yes.

Q. Who hired you when you first went to work for the Row River Lumber Company?

A. I was working here in Portland at the time, and I wrote down to my brother and asked him to see the boss for me. He was working there at the time and he got the job for me.

Q. Did you know at the time you could get your meals at the cookhouse of the Row River Lumber Company? A. Yes, sir.

Q. Did you know at the time that you could sleep in the bunkhouse of the Row River Lumber Company? A. Yes, sir.

Q. Do you know how much you were charged for meals, per meal, that you ate in the bunkhouse of the Row River Lumber Company?

A. Sixty cents a meal, I believe it is.

Q. Do you know whether that is cheaper than

(Testimony of John A. Lancaster.)

you would be able to get a meal in a public restaurant? A. Yes, it is cheaper.

Q. Was the fact that you could get cheaper meals at the cookhouse of the Row River Lumber Company an inducement for you to [189] go up there and work? A. Not especially, no.

Q. But would you say that is one of the attractive features of working there for the Row River Lumber Company, that you can get cheap meals?

A. I wouldn't say. There is nothing very attractive about it, because it is kind of dead up in that country.

Mr. Scott: That is all.

Cross-Examination

By Mr. Davidson:

Q. Mr. Lancaster, you work in the woods, do you?

A. Yes.

Q. You have worked in the woods before in other camps? A. Yes, sir.

Q. What ones?

A. I worked for Nelson Johnson.

Q. Do they run a cookhouse? A. No.

Q. Where else did you work?

A. The Washington Veneer, up here in Washington. It is up above Cougar, the camp is.

Q. Did they have a camp and cookhouse there?

A. Yes.

Q. What did they charge you per meal there?

A. I don't remember exactly what it was. [190]

Q. Do you know whether the price which the Row River cookhouse charges for the employees is

(Testimony of John A. Lancaster.)

more or less or about the same as it would cost to run their own cookhouse?

A. Well, that one is the only other one I ever stayed in, while working in the woods. I don't really know.

Q. You do not have any experience on that?

A. No.

Q. You say you are married? A. Yes.

Q. Do you have any family?

A. One daughter.

Q. Where do your wife and daughter live?

A. Here in Portland.

Q. They could live at the Row River Lumber Company, couldn't they, if you could find a house?

A. Yes, if you could find one.

Q. They would not like it? A. No.

Q. You could live in Cottage Grove?

A. Me and my wife is separated.

Q. You could room and board in Cottage Grove, if you wanted to, couldn't you? A. Yes.

Q. Do you have a car? A. No, sir. [191]

Q. Is there a bus that runs?

A. There is a crummy that runs out there.

Q. What you call a crummy or a company bus runs from Cottage Grove? A. Yes.

Q. The men do come and go in this bus?

A. Yes.

Q. You like the way you are doing better?

A. Yes; don't like to ride on it.

Q. So, it is not essential for a single man to work there to live in the bunkhouse or eat at the cookhouse, is it? A. No, it is not really necessary.

(Testimony of John A. Lancaster.)

Q. You are not required to eat at the cookhouse, if you don't want to? A. No.

Q. You are free to go to Cottage Grove and eat?

A. Yes.

Q. And live where you want to? A. Yes.

Mr. Davidson: That is all.

Redirect Examination

By Mr. Scott:

Q. If you lived in Cottage Grove, where would you get lunches to eat in the woods at noontime?

A. There is a restaurant that puts them up. There are several [192] boarding houses that I have heard spoken of in Cottage Grove.

Q. You told Mr. Davidson it is not necessary for you to eat at the cookhouse at the Row River Lumber Company? A. Yes.

Q. If there are any meals that you do not eat at the cookhouse, are you, nevertheless, charged for those meals?

A. No, sir; but you would be charged if you came in just a few minutes before supper and told them, "I don't want my supper." Then you would be charged because it was already prepared. Otherwise you wouldn't be. If I had my lunch there and told them I did not want my dinner, right after lunch, I would not be charged.

Q. How many employees live in the bunkhouse of the company? A. Six in there now.

Q. Do you know whether they eat their meals at the cookhouse of the company? A. Yes.

Q. Do the other employees who live in this bunkhouse eat all three meals in this cookhouse?

(Testimony of John A. Lancaster.)

A. No, sir; some of them doesn't eat breakfast; they never eat breakfast.

Q. All of these six fellows who live in the bunk-house eat one or more meals per day in the cook-house?
A. Yes, sir.

The Court: Do they do that heavy work without eating [193] breakfast?

A. There is one who hardly ever eats breakfast and there is one that eats breakfast about twice a week. Then there is another one that don't eat his breakfast at all.

The Court: And they do that heavy work?

A. The other two work in the mill and I don't know what kind of work they do there.

Mr. Scott: That is all.

Recross-Examination

By Mr. Davidson:

Q. Did you say that you have the cookhouse put up your lunch for you?

A. I did up until recently, yes.

Q. You are putting it up yourself now?

A. Yes.

Q. Where do you get the food with which to put it up?
A. At the store.

Q. It is perfectly possible for a person to do that if he wants to, is that right?
A. Yes.

Mr. Davidson: That is all.

(Witness excused.) [194]

EDMUND HAYES

was thereupon produced as a witness on behalf of plaintiff, and being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Scott:

Q. Mr. Hayes, you are the President of the Row River Lumber Company? A. Yes.

Q. How long have you been President?

A. Since its incorporation, I would say, in approximately the early part of 1939—1938 maybe; 1938 or 1939.

Q. Do you recall the date when the Row River Lumber Company remodeled its bunkhouse to be used as a cookhouse?

A. Not the exact date. I would say it was around 1942, some time, in the summer.

Q. Who owned that bunkhouse prior to the time it was remodeled by the company?

A. To the best of my recollection, Frank Bloomer, our logging superintendent, who lived at Beaver Creek, Oregon. When we went down there in 1939, he did not want to move his family down immediately and he asked us if it was all right for him to build a small bunkhouse on the corner of the property. This is on the extreme corner of the property, between Thomason's property and—I believe at that time we told him we could do it and, to the best of my knowledge, he purchased the lumber from the [195] company and built a small one-room, one-garage home and used it for a few months in the year and then gave it up. I cannot recall, but I am sure

(Testimony of Edmund Hayes.)

that the Row River Lumber Company acquired his full equity in the cabin.

Q. They purchased it from him?

A. Yes, sir. I assume so. I could not prove that without going to the books.

Q. What was the occasion or necessity for the Row River Lumber Company remodeling this bunk-house for use as a cookhouse for the company employees?

A. To make adequate facilities for a cookhouse for Mrs. Garoutte, and I think in addition to that question is the circumstances leading up to that, which I will give you, if you want them.

Q. Yes, if you will, please.

A. In 1939 the Row River Lumber Company started its operations at its present site, started logging operations in the woods, and the construction of a mill site.

Very shortly, as I remember, after we went down there, Mrs. Thomason came to us. I remember the lunch we had at their son-in-law's, I believe Mr. Wick. Mr. and Mrs. Thomason were present at that lunch in the summer of 1939 and Mrs. Thomason asked us if we would be interested—he would like to put in a grocery store on the south corner, just off our property on the main road, across from our property. He suggested that if he put this grocery store in we might be [196] willing to collect or allow the bills to be paid on the men's paychecks.

That seemed to be a reasonable thing and we needed some sort of facilities for men to buy groceries there, and I said yes, I thought we would be

(Testimony of Edmund Hayes.)

interested, whereupon, as I remember, Mrs. Thomason said, "Wouldn't you be interested in my running a cookhouse in conjunction with that grocery store?"

We knew that we would not have over eight to ten or twelve men, many times less than that, living there or eating there.

As I remember, we discussed the situation, and she said she would be willing to furnish the meals at a certain price, contingent upon costs at that time, with the arrangement that if costs went up she would have or there would be an opportunity for her discussing that with the company, and the amount to be charged to be deducted on the payroll, as well.

We were interested in such a proposition because in running a very small cookhouse it is difficult to do it under supervision when you are building or constructing a mill—we wanted an independent cookhouse there. We were anxious to encourage private enterprise in the valley. We are always interested in encouraging private enterprises in the Row River valley. We have made frequent contracts with our work because we think that it is a more satisfactory method for any person to do a job. Many people prefer to do a job under the system [197] of private enterprise.

Mr. Thomason constructed this grocery store with the addition of sufficient room for a cookhouse, and we told Mrs. Thomason—she said, "I have no equipment to fit this cookhouse up with." My partner, Mr. Noyes, had recently been operating at Bridal Veil and had equipment, including cooking equip-

(Testimony of Edmund Hayes.)

ment, and plates and spoons and forks and knives, which they didn't need. We thought, in order to make it possible for her to do a better job, for her to make more money, which we wanted her to make, we would supply her with that cookhouse equipment, she to furnish the building.

The arrangement was completed and deductions were made on the payroll, to the best of my knowledge. It was a very satisfactory arrangement, but Mrs. Thomason found it was too much for her physically. She was not a young woman and it was considerably of a job.

Mrs. Garoutte at that time, I believe, was her assistant, at least part of the time, from 1939 to 1942. As I recall it, in 1942 Mrs. Thomason told me once or twice that she was finding it necessary—she did not want to run the cookhouse any more, and, as I recall it, Mrs. Garoutte, who was her assistant, came to me and said, “I would like to take up where Mrs. Thomason left off. I would like to contract all meals, but I have no facilities, I have no house, I have no equipment.” [198]

Costs were rising in 1942, if you will recall it; the war was getting on and prices of foodstuffs were rising quite rapidly.

I had never examined the books of Mrs. Thomason, Mrs. Garoutte or Mrs. LeCompte. I asked them occasionally, because I was interested in a satisfactory contract from their side and on our side—I was interested in food, in satisfactory food for our men. That was the only suggestion ever made to any of the contractors in our cookhouse. Fortu-

(Testimony of Edmund Hayes.)

nately, they were all good. They have done a good job. There was no cause for complaint.

Mrs. Garoutte said she had no facilities. We asked her if we remodeled this bunkhouse, which was just next door, practically, to Thomason's store on the main road, the main road from our mill—across the main road from our mill, rather—We asked her if we furnished the building, the facilities, the wood, water and light, if she would be interested in carrying on at the old price which, as I recall it, was around 40 cents, 40 or 50 cents. She said she would be under the same arrangement as with Mrs. Thomason, and we proceeded to remodel the bunkhouse to make it into a small cookhouse which would take care of about eighteen to twenty men, possibly a few more. In addition, there would be a kitchen, living quarters and a place where the men eat.

That was done, I believe, in the summer of 1942 and [199] was carried on by Mrs. Garoutte very successfully until 1945. She did a splendid job. It was during a period of extreme scarcity. The plant was being forced to turn out essential war materials. The cookhouse was run very successfully.

We started with a few men, as I told you, in 1939, and it gradually built up until our maximum crew ate in the cookhouse. At the height of the war, I would say in 1944, there were eighteen to twenty-four men eating there, something of that kind. All terms of the contract were met and were carried out satisfactorily to Mrs. Garoutte, I believe, and to the company, I know.

(Testimony of Edmund Hayes.)

Now, maybe I have gone too far. I have told you about the remodeling of the cookhouse. Mrs. Garoutte handled it until 1945.

Q. Do you recall how much Mrs. Thompson was paid per meal?

A. I think at the latter part it was around 50 cents.

Q. Of that 50 cents was not 40 cents deducted from the employees' wages and 10 cents paid to Mrs. Thomason as a subsidy by the company?

A. That is right. Do you want to know the reason for it?

Q. Yes.

A. The reason for it was this: 40 cents, I believe, was the first price we paid her. She, shortly afterwards, told us that she could not do it for 40, so we felt she should have more. We were interested in paying her—allowing her to be paid a sufficient amount for meals so she could make something, make a reasonable profit on it, because she deserved that. We felt her claim was just and at the time we did not wish to raise the board bill to the men because we wished to have as many men as possible come out from Cottage Grove, which is thirteen miles away. We were competing with mills in Cottage Grove for men and felt if we could furnish a meal for 40 cents or 50 cents it was an inducement for men to come out, so we agreed to assume a 10-cent additional subsidy and let her charge 50 cents, realize 50 cents a meal.

(The Court then proceeded to the transaction of other business.)

(Testimony of Edmund Hayes.)

By Mr. Scott:

Q. Mr. Hayes, I hand you some yellow paper with some writing on it and ask you if that is your signature on Page 3?

A. It appears to be, yes.

Q. Do you recall signing this statement on this date, May 8, 1947?

A. I remember talking with a gentleman concerning it. I don't remember all the details.

Q. On about the date of May 8, 1947, do you recall talking to Inspector Faith who is sitting at this table?

A. I don't remember the date, but I remember talking with the Inspector.

Q. Do you remember that, after you finished your conversation, [201] Mr. Faith wrote out this statement and gave it to you and asked you to sign it, if you wanted to?

A. I assume I did because I would not have signed it if I didn't.

Q. Do you recall that before you signed the statement you said you wanted your attorney, Mr. Davidson, to read the statement, first?

A. I presume I did.

Q. I would like to have you read those two paragraphs right here in this statement to the Reporter, please.

A. "Our agreement was that Mrs. Garoutte was to furnish the company each month with a list of the meals furnished each employee for the period. The company agreed to deduct 40 cents for each

(Testimony of Edmund Hayes.)

meal from the men's pay and pay 10 cents per each meal from company funds.

“Our reason for paying 10 cents per meal from the company funds was that the mill is located at quite considerable distance from a town and labor is difficult to secure and keep. Holding down the cost of meals to the men was an inducement for them to remain in our employ.”

That is the statement I made.

Q. And that is still your explanation of this?

A. That is the explanation, the one made at that time, yes, to the best of my memory.

Q. Would you say that is still the explanation of the reason [202] for the subsidy paid for meals?

A. Not entirely. Conditions have changed since then.

Q. At the time you made this statement, this statement represented the true reason for the payment of subsidy for the meals?

A. I would think so.

Q. To what extent has what you have said there changed since you made this statement?

A. Have you been in touch with the labor situation in the lumber industry?

Q. No, sir.

A. Then you are not acquainted with labor contracts, involving the amount for meals which the men pay in surrounding communities.

Q. No, I don't know anything about the logging industry.

A. Well, I think there are other considerations today in connection with such a thing, but, gener-

(Testimony of Edmund Hayes.)

ally speaking, I think the original arrangement for the company to absorb some of the subsidy or some of the increase in costs of board, some of the periodic increases, was largely with that in mind, and also the fact that the company has been involved in numerous labor negotiations and, as a result, from all the reasons that we have—and there are many others, too—we have been inclined to hold down the cost of meals as much as possible in that community down there rather than to have them come up. We feel it is an advantage to our employees. [203]

Q. Did you make the agreement with Mrs. Garoutte to do the cooking at the cookhouse?

A. As I recall it, yes.

Q. That agreement was completely oral, was it not?

A. Yes.

Q. It had no definite term for which it was to run?

A. That is right. It was satisfactory to both parties.

Q. The company could have dismissed Mrs. Garoutte at any time under the arrangement?

A. No.

Q. Would you explain that “No”?

A. That would violate all the policies we have ever had in connection with the operation of the company.

Q. In other words, it is the policy of the company, when a person's services are terminated, to give reasonable notice, is that correct?

A. Yes, until they can make an arrangement satisfactory to themselves and also they, in turn,

(Testimony of Edmund Hayes.)

can make an arrangement to give us notice satisfactory to us.

Q. Does that policy apply to employees of the company that work in the mill and in the woods, too?

A. Naturally, and it also, if I might add, applies in subcontracts. The Willamette Valley is a great place for verbal contracts, and I think this probably has worked out more successfully than any written contract the company has ever [204] had. It has run since 1939, to 1948, and I know of no disagreement under this contract. I know of no understanding on either side which has not been fulfilled, and that is a pretty good record.

Q. When the company first built the mill and the planing mill there, was it decided at that time that there should be a cookhouse run in conjunction with the mill?

A. No. At what time are you referring to?

Q. When you constructed the mills, did you also plan a cookhouse to be operated in conjunction with the mill?

A. No, we have never planned to operate our own cookhouse, and this was borne out by the arrangement we were immediately offered when *we* down there by by Mrs. Thomason, which was entirely satisfactory to us.

At the time you first began talking with Mrs. Thomason, the company was in the market for someone to operate a cookhouse for the company employees, is that correct? A. No, sir.

Q. What was your purpose of entering into this

(Testimony of Edmund Hayes.)

arrangement with Mrs. Thomason to operate this cookhouse if the company did not want a cookhouse for the feeding of its employees?

A. Your question asked me whether at that time we had planned for a cookhouse, is that correct?

Q. I asked you whether, at the time you constructed the mill, you also planned a cookhouse?

A. No, sir, we did not have sufficient men to establish such a cookhouse. It was a convenience for those of us who ate there but not a necessity.

Q. After the mill was completed and it was producing lumber, then did it become necessary or convenient that a cookhouse be operated for the employees?

A. Convenient, but not a necessity.

Q. And at that time did the company desire that some arrangement be made to have the cookhouse operated for the employees?

A. As a convenience, not a necessity.

Q. When Mrs. Thomason first thought about building this cookhouse, didn't she want it built in a different location from which it was later constructed? Didn't she want to construct a cookhouse about 200 yards down the road, and you said you would like to have it constructed at the present site because it would be more convenient for the employees to eat at the site which you selected?

A. I don't remember. I have no recollection of that.

Q. Didn't you tell Mrs. Thomason you preferred it to be located directly across the road

(Testimony of Edmund Hayes.)

from the mill as it would be more convenient for the men to come from work?

A. I don't recall that. I don't see how that could have been done because Mr. Thomason had selected a site, I believe, when we went down there, so they were restricted, almost restricted as to the place to build. [206]

Q. Before Mr. Thomason did select the site, did he have any other site in mind?

A. I don't recall.

Q. Mr. Hayes, do you recall the time when Mrs. Garoutte became ill and had to go to the hospital? Do you recall that time?

A. Approximately, yes.

Q. Do you recall that during the time she was in the hospital and also after she resigned and Mrs. LeCompte was retained as cook, that for about two weeks before Mrs. LeCompte could take over the cookhouse Mrs. Margaret Cooper was the cook? Do you recall that?

A. I recall there was a period in between in which I thought that Mrs. McCormick was in there at that time. I don't recall how it was handled.

Q. During that period that Mrs. McCormick was working with Mrs. Cooper, did you hire Mrs. McCormick?

A. I don't recall. I don't know whether Mrs. Garoutte or somebody else made the arrangement with her. I think Mrs. McCormick was down there before I was aware of it. It might have been before. I don't recall it at the present time.

Q. Do you recall talking to Mrs. McCormick at

(Testimony of Edmund Hayes.)

all concerning her working there during that period?

A. Yes, I do. I remember having some conversation with her in which we made some arrangement on a temporary basis to take [207] care of the situation, to run the cookhouse.

Q. What were those arrangements, do you recall?

A. As I remember, we asked her for the number of hours that she had coming eventually—As a matter of fact, I don't think she cared to do it at all, but she was willing to do it to help Mrs. Garoutte and to help the company. She came in voluntarily to pinch-hit until we made arrangements with somebody else to take on the contract for running the cookhouse. As I remember, I asked her for the hours that she had worked, and we agreed on a per-hour basis and she was paid on that basis.

Q. Did you ask Mrs. McCormick to work at the cookhouse to help out the company during that period?

A. I assume so, to keep the cookhouse going it indirectly would help the company, yes.

Q. Do you recall asking Mrs. McCormick?

A. No, I don't. I don't remember any such remark as that. This contract with Mrs. Garoutte—They were with the company; there is no question about that. The company would not have made it if it was not.

Q. Did the company pay Mrs. McCormick during the time that she was there?

(Testimony of Edmund Hayes.)

A. I think it did.

Q. Did you make the arrangement with Mrs. McCormick to pay her on behalf of the company?

A. I believe I did. It was either through her husband, Mr. McCormick, who was working for the company, or—I think we made it directly with Mrs. McCormick.

Q. Did you make the arrangement to pay Mrs. Cooper during that period?

A. I don't recall that.

Q. Did you select Mrs. Cooper to be the cook during that period? A. No.

Q. But you did pay Mrs. McCormick for her work during that period?

A. I paid her, as I recall it, for the supervisory work that was necessary between Mrs. Garoutte and the acquisition of another contractor to run the cookhouse. We naturally had to pay her for her services during that period.

Q. Why did the company pay Mrs. McCormick for her services rather than Mrs. Garoutte?

A. I presume at that time Mrs. Garoutte would be considered as giving up the contract. She was incapacitated and was in the hospital. Steps had to be taken to replace her as a contractor.

Q. How could you say Mrs. Garoutte should give up the contract if Mrs. Cooper was selected by Mrs. Garoutte to continue as cook while she was in the hospital?

A. I think Mrs. Cooper was trying to carry on with [209] Mrs. Garoutte's contract to the best of her ability. I assume that was the case.

(Testimony of Edmund Hayes.)

Q. Mrs. Cooper did not have a contract with the company to cook, did she?

A. I don't think so. I would not consider it so.

Q. Wouldn't you say then at the time Mrs. Cooper was cooking, while Mrs. Garoutte was in the hospital, that she was substituting for Mrs. Garoutte under Mrs. Garoutte's contract?

A. Mrs. Cooper was substituting?

Q. Yes, for Mrs. Garoutte, under Mrs. Garoutte's contract, while Mrs. Garoutte was in the hospital?

A. That is an assumption which I would not want to pass on right now. It was the situation of a breakdown in the cookhouse; because Mrs. Garoutte was laid up in the hospital, we had to do whatever we could do so the men could eat there.

Q. It was necessary to keep that cookhouse running during the time she was in the hospital, is that right?

A. It was a very convenient thing, yes. It was to the advantage of the company, just as our original contract was.

Q. Mrs. McCormick said she was paid \$300 by the company for her services during that time. Is the paying out of \$300 of the company's money merely a convenience? A. A convenience?

Q. Yes.

A. Well, it is a convenience, yes, in order to keep the [210] cookhouse going.

Q. What I mean is this: Are you paying out \$300 of the stockholders' money merely as a con-

(Testimony of Edmund Hayes.)

venience or as a necessity in the operation of the company?

A. Sometimes a convenience and sometimes a necessity. The stockholders never do things entirely—don't want the officers of the company to do it from necessity always. We do it for many reasons.

Q. The point is: It is a benefit to the operation of the company that this money was spent in this way?

A. That is right.

Q. If it were not a benefit to the company in the operation of its business, you would not spend the money?

A. That is right.

Q. During the time Mrs. McCormick was at the cookhouse and was paid, did the company keep a record of the hours she worked each day and each week?

A. As I remember, I asked Mrs. McCormick to keep her time and she turned in the approximate time that she had spent there.

Q. Was she paid on the basis of the time she turned in?

A. I assume she was, yes.

Q. Was she paid an hourly rate for that time?

A. I think it was figured up on an hourly basis, the time she spent. [211]

Q. And you told her what her hourly rate would be when she began working there?

A. I think Mrs. McCormick was there before I realized she was there, because she came down to fill in, and the arrangement I think was made subsequent to the time she arrived, subsequent to the time she was working.

(Testimony of Edmund Hayes.)

Q. But you told her how much she would be paid an hour for her services?

A. I assume I did, yes.

Q. During this time, if it was not the responsibility of the company, why did you feel it was up to you to arrange to have help for Mrs. Cooper, if Mrs. Cooper was merely substituting for Mrs. Garoutte?

A. They had had two operating the cookhouse up to that time. I assume they needed two from then on to run it. That was the conclusion, I imagine, we came to at the time. It was in the middle of the war or, anyway, it was when there was a great demand for men and, naturally, when you have a cookhouse established in a community the men use it, and there were many transient men coming and going.

Q. Isn't it a fact when Mrs. Garoutte went to the hospital it looked like the cookhouse was going to close down unless the company did something to keep it open, and that something would have to be done by the company to see that sufficient personnel was in the cookhouse to operate it, and you took it [212] upon yourself to see that that situation was remedied?

A. I think Mrs. McCormick went down there before I ever had anything to do with it. She went down in order to keep the cookhouse going. Whether she went down to help Mrs. Garoutte out, I don't know, but we made the arrangement when she was there. Naturally, she did not want to stay there, and we had to recompense her. Mrs. Garoutte was

(Testimony of Edmund Hayes.)

gone and we more or less had to carry on because it was then an established institution.

Q. You realized that Mrs. McCormick would not remain there unless she was paid something for her services? A. Naturally.

Q. You also realized it was up to the company to pay her for her services?

A. I assume so, because Mrs. Garoutte had been ill and had not probably been able to leave the situation in tip-top shape and, as a result, we stepped in and helped out to that extent.

Q. Wouldn't you say it has been the policy of the company, in connection with its cookhouse, that, whenever it becomes necessary that the company step in and help out, the company has been glad to do so?

A. Naturally. We are always glad to cooperate with any contractor. It is mutually advantageous. We have always been glad to cooperate with the cooks because we wished them to make a success and we were aware that it was a convenience to the company to have it. [213]

Q. Do you recall whether or not the Row River Lumber Company paid social security taxes on the amount of money paid Mrs. McCormick?

A. I would assume we did, but I would want to verify that by the record.

Q. Do you know whether or not withholding taxes were paid by the company on the money that she received?

A. I assume that would be the case.

Q. And old age benefits and unemployment

(Testimony of Edmund Hayes.)

taxes? A. I assume so.

Q. Do you recall that application was made by the Row River Lumber Company for supplemental rations at the cookhouse during the war?

A. Yes, sir.

Q. Did you ever talk to Mr. Shoberg about making application for those rations?

A. Yes.

Q. What did you tell Mr. Shoberg, do you recall? A. I don't recall.

Q. Did you tell him to do everything necessary to get supplemental rations needed by the cook?

A. I assume I would, under those conditions.

Q. Who are Youngblood & Martin?

A. They are contractors, falling and bucking contractors. They fall and buck the timber before it is yarded in the woods. [214] We have had a contract with them—We did have a contract with them but not now. They are both gone, but in the record you referred to Youngblood & Martin. Those are falling and bucking contractors.

Q. When the contract was made with Youngblood & Martin to perform this work for the company, were they told that their employees could eat at the company's cookhouse?

A. I couldn't tell you. The arrangement in our operation is this: The Vice-President of the Company, Mr. Noyes, would take care of all woods operations and I take care of all operations at the mill. I only am aware that we have such a contract but I couldn't tell you what arrangement was made as to where they ate.

(Testimony of Edmund Hayes.)

Q. Do you know that the employees of Youngblood & Martin do eat at the cookhouse?

A. I think most of them eat there. I wouldn't be sure, because I know very few of their men; not acquainted with them personally. I know some of them, because some have been in our employ before they worked for them.

Q. I will show you Plaintiff's Exhibit No. 4 and call your attention to the Statement No. 224, dated February 12, 1946—No, Statement No. 834, dated August 11, 1947, which has the entry "17 meals at 50 cents (Youngblood & Martin), \$8.50." I will ask you if you can tell me what that represents?

A. No, I couldn't. I am not sufficiently conversant. I assume [215] it applies to men for whom deduction was made.

Q. That is, employees of Youngblood & Martin who ate at the cookhouse? A. I assume.

Q. You would assume that?

A. I would assume that. That is correct.

Q. In other similar entries on Plaintiff's Exhibit No. 4, would you assume that to be the same situation? A. I have not seen them.

Q. I beg your pardon?

A. I have not seen these other entries you are talking about.

Q. For instance, then, statement numbered 812, dated July 11, 1947, there appears the entry "95 meals at 50 cents (Youngblood & Martin) \$47.50."

A. I assume that would be the same thing. Do you want an explanation of that?

(Testimony of Edmund Hayes.)

Q. Yes.

A. They operate a good many miles from the mill. I assume with the office at the mill, Youngblood & Martin found it a convenience to turn in their accounts to the office and make deductions at the office for these meals.

Q. Do you know whether the question was asked beforehand whether the cook wanted to serve the employees of Youngblood & Martin?

A. I couldn't tell you. [216]

Q. Mr. Hayes, the Row River Lumber Company spent a considerable bit of money on the remodeling of this cookhouse and equipping of the cookhouse and repairs to the cookhouse since it was opened in 1942.

A. The record which I brought in here yesterday I think showed some \$2100.

Mr. Davidson: \$2700, we stipulated this morning or, rather, \$3700.

Q. (By Mr. Scott): About \$3700 has been spent by the Row River Lumber Company on this cookhouse. Would you say that the Row River Lumber Company spent that amount of money, stockholders' money, unless this cookhouse be considered an appropriate function in the operation of the mill?

A. What do you mean by "appropriate function?"

Q. That the management of the company considered that the operation of this cookhouse was to cost about \$3700, that that is a justifiable expense for the operation of this mill of the company?

(Testimony of Edmund Hayes.)

A. I think it is a justifiable expense. I would also add \$3700 is not any great sum today in any investment in a cookhouse.

Q. It is quite a bit of the stockholders' money, though, isn't it?

A. I would not think so, in considering building costs today, no. [217]

Q. Would the company continue to pay several hundred dollars a month—I think it amounts to two or three hundred dollars a month—in its subsidy that they pay for these meals—Would the company continue to pay that amount of money in the operation of this cookhouse if it was not rather essential to the operation of this mill?

A. I wouldn't say that it was absolutely essential. In fact, when we were down there, you asked the question in which you said, "Did the company plan when we went down there to establish a cookhouse?" I would say No, because there are so many people in the Willamette Valley, ranchers and so forth, living around there who want employment, and still live at home. We are very glad to let them live at home. It is a convenience, yes, and it is a convenience that I don't know whether we can afford to continue or not. As a matter of fact, I think there is very serious consideration at the present time, with the number of men who are eating there, as to whether we can afford to have a contractor working there and continuing that.

We will have to substitute men who live in the vicinity for those who are leaving there, and we will probably have to do that. It would be an un-

(Testimony of Edmund Hayes.)

fortunate thing for men who live there at the mill and eat at the cookhouse, but nevertheless they can be replaced from the community.

Q. That is just your assumption, that they can be?

A. That is my assumption, yes, it is my opinion.

Q. You have never made any survey to see whether or not you could substitute the employees who eat at the cookhouse with ones who could eat in private homes around the area? You have never made any such survey?

A. You don't need to make more of a survey. They come down in the morning at breakfast and have dinner at home at night. When you only have five or six men eating there, that would not be a very great demand to make, that they either find places to live around there or we will have to replace them with men who can.

Q. Just a little time in the past as many as thirty people ate in the cookhouse?

A. That is right. It was that much more of a convenience.

Q. But during the war years, about thirty people ate in the cookhouse, is that correct?

A. Oh, I doubt if it would average thirty; between twenty and thirty, yes.

Q. The purpose of having this cookhouse and spending this company money on the operation of the cookhouse is that it is to feed the employees of the Row River Lumber Company?

A. The purpose of spending \$3700, you mean, and the subsidy?

(Testimony of Edmund Hayes.)

Q. Yes. The purpose is to provide a place for the employees of the Row River Lumber Company to obtain meals?

A. I think that is a fair statement, yes; the reason we went into the contract originally. [219]

Q. If the cookhouse were operated in a manner which was not satisfactory to you, would you feel that conditions would have to be changed and a new cook would have to be obtained?

A. Not necessarily.

Q. What would you do in that situation?

A. Just what anybody else would do if he had a contract with anybody and they were not satisfactory in performing it—go to them and discuss the situation.

Q. You would discuss the situation with them?

A. Yes.

Q. If that would not remedy the situation, in connection with the arrangement you have with the cook, you can dismiss her?

A. I could not.

Q. The company can dismiss her?

A. No, the company could not as long as I am an officer of it. That would be violating one of their greatest policies, being fair with whomever they are dealing with, and I think that would be vouched for by the employees who are here, if you wish to call them.

Q. I am not talking about what the company and plant policy is. I am saying: Under the arrangement they can be dismissed at will by the company?

A. Our policy——

Q. I am not talking about policy. I am talking

(Testimony of Edmund Hayes.)

about what you can do under this contract, if you so choose? [220]

A. No, I would say the essence of this contract is not that; the substance of this contract is not that. I don't think any of these contractors we have had up here would say that. I do not think any of them would expect to be discharged on momentary notice. It is what is behind the contract.

Q. The contract has no definite term to run, has it? A. No, sir.

Q. The contract is not for a particular season or a particular year? A. No.

Q. Nor for a particular number of months?

A. No, sir, but they have held that contract, if you will go back in the record and see, for a considerable period, and they have all left because of their wish, their desire to terminate it, and they have never terminated on immediate notice. There has been a period of a lapse of thirty to sixty days, in Mrs. Garoutte's case and Mrs. Thomason's case.

Q. Let me state the question again. The contract has no definite term to run. Couldn't you discharge a contractor if you so chose without any notice whatsoever, if they operated the cookhouse in a manner that did not meet with your approval?

A. The spirit of the contract is to give these people time, and there is no other guiding force that would bind me to discharge them or that would force me to discharge them in that manner. [221]

Q. The only permanency of the relation of the cook to the company is that, so long as it is mutually satisfactory, the arrangement will continue?

(Testimony of Edmund Hayes.)

A. That is right.

Mr. Scott: Your witness.

Cross-Examination

By Mr. Davidson:

Q. Will you describe about the size of the cook-house, the building we are talking about here, the external dimensions?

A. Well, the part where the men are served meals is approximately 30 or 35 feet long by 12 feet wide, 12 or 14.

Q. 30 or 35 by 12? A. Yes.

Q. What type of construction?

A. It is extremely light construction.

Q. Lumber?

A. Lumber; shingle roof.

Q. You have spent \$3700 over a period of eight years or about \$450 a year, or maybe \$35 a month, for 150 employees. Do you consider that extravagance? Do you consider that extravagant for a convenience? A. I wouldn't consider it so.

Q. How were prices set that were to be charged for meals by the cookhouse contractors?

A. By mutual agreement between the contractor and, usually, [222] myself.

Q. Did you at any time say to any one of the cooks, without any consultation, "Prices from now on will be thus and so"? A. No, sir.

Q. Has the price agreed upon, as to each of these, been satisfactory with the contractor?

A. I assume it has. It is as satisfactory as any agreed price can be and we know—We have been through very difficult times in operating restau-

(Testimony of Edmund Hayes.)

rants, as anybody in the business will testify, I think, today with rising costs of food and difficulty of obtaining food. The only assumption I can make is that this contract has been reasonably satisfactory, because the contractors have all stayed with it. In both the case of Mrs. Thomason and Mrs. Garoutte I think it was physical disability that made them give it up.

Q. Have you at any time given any orders to any of the contractors as to what food they shall serve? A. No.

Q. Has anyone done that under your direction?

A. Not to my knowledge.

Q. You would know if you have directed them to do so? A. Yes.

Q. Have you ever ordered or instructed or had anyone else instruct any of these cookhouse contractors as to whom they should employ? [223]

A. No.

Q. Whom they should employ to help them?

A. No, sir.

Q. Or from whom they should buy goods or supplies? A. No.

Q. There has been evidence here that the company gave some assistance in obtaining some shortening and some potatoes for the cookhouse?

A. That is right.

Q. Will you explain that situation, why that was done?

A. At that time there was an extreme shortage of food, especially in outlying districts. As I recall it, Mrs. LeCompte reported the difficulty she

(Testimony of Edmund Hayes.)

was having to Mr. Shoberg who naturally cooperrated with Mrs. LeCompte in obtaining the food, the way anybody naturally would; you would help out the best you could to keep the wheels going, and our company was only doing that, and they were paid—I am sure they were paid by the contractor; the company was paid for things that it obtained or purchased for them. It was natural to assume the contractor would come to us because we had a Portland office.

The Court: Recess until one-thirty.

(Thereupon a recess was taken until 1:30 p.m.) [224]

(Court reconvened at 1:30 o'clock p.m. Friday, March 5, 1948.)

EDMUND HAYES

thereupon resumed the stand as a witness in behalf of plaintiff and further testified as follows:

Cross-Examination (Continued)

By Mr. Davidson:

Q. Have you at any time during the existence of any of these contracts with Mrs. Thomason, Mrs. Garoutte and Mrs. LeCompte, inspected the cook-house to determine whether it was maintained in a satisfactory manner?

A. Only casually when I went there to eat.

Q. You gained an impression at that time?

A. That is all, just an impression.

Q. Did you ever give any orders to any of the

(Testimony of Edmund Hayes.)

contractors as to the maintenance or manner of maintenance? A. No, sir.

Q. Is Row River what is known as a company town?

A. No, there is no town there, as such. There are houses there which we built, largely,—about fifteen or eighteen houses which were built by local men and rented largely to Row River Lumber Company employees.

Q. Does the company own some houses there?

A. They only own six houses which we built during the shortage—during the war. [225]

Q. By whom are those houses occupied?

A. Largely by key men. We have two back of the sawmill; we have eight company houses.

Q. Eight houses altogether? A. Yes.

Q. Do you undertake to furnish housing for anyone who comes there to work?

A. No. We have had a policy of—We sell employees lumber at cost and encourage construction of their own houses, and many have done that, up and down the Valley. We sell them a bill of lumber for it at our wholesale price, not the retail.

Q. What were your total sales of lumber and wood products by the Row River Lumber Company in the year 1947?

A. About a million and a half.

Q. Is the investment of some \$3700 in the cook-house and equipment significant in relation to that total investment, to your total investment there?

(Testimony of Edmund Hayes.)

A. I would not consider it so.

Q. Did you at any time say to Mrs. Thomason or Mrs. Garoutte or Mrs. LeCompte, at the time of making arrangements with any of them, or thereafter, that they were employees of the Row River Lumber Company? A. No, sir.

Q. Did you consider them to be employees?

A. Never. [226]

Q. You have cooperated with the local store there in collecting store bills through the payroll, haven't you? A. That is right.

Q. Do you make any charge to the man who runs the store for that service?

A. No. We allow the store to sell and to make deductions on the payroll, and we have no connection with the store whatever. We feel it is a service to the men and help maintain that store.

Q. You also make payroll deductions in connection with charges for bunkhouses owned by persons other than the company?

A. That is right.

Q. Do you make a charge against the owner of the bunkhouse for that service? A. No.

Q. That is just an accommodation and cooperation? A. Yes.

Mr. Davidson: That is all.

Mr. Scott: I have no further questions.

(Witness excused.) [227]

MRS. EDITH LeCOMPTE,

having been previously duly sworn, was recalled as a witness on behalf of plaintiff and further testified as follows:

Direct Examination

By Mr. Scott:

Q. I would like to clear up a point that may be confusing in the record. I hand you Plaintiff's Exhibit No. 4 and refer again to the statement with the number 224 on it, dated 2/12/46.

I call your attention to the fact that 1,584 meals were paid to you at a price of 40 cents, whereas 1,712 meals were paid to you at a 15-cent bonus. I will ask you to state why more meals were paid to you at the bonus than when a payroll deduction was made?

A. The extra meals is the boys that worked for Youngblood & Martin and they paid me the cash, 40 cents a meal, what the employees are supposed to pay, and the company paid the 15-cent bonus on those meals, the same as the other meals.

Q. I will ask you to look at the statement with the number 812 on it, which contains an item of 94 meals or 95 meals, rather, at 50 cents, Youngblood & Martin, and ask you if there was any difference in the way meals for Youngblood & Martin were paid for during the time they ate at the cook-house?

A. No, sir.

Q. You stated before that the employees of Youngblood & Martin paid you directly in cash the amount that they were charged [228] for their meals?

A. Yes, sir.

(Testimony of Mrs. Edith LeCompte.)

Q. Here it shows that the company made a deduction of 50 cents per meal from the payroll for Youngblood & Martin employees and paid that to you as a payroll deduction? A. That is right.

Q. For a while the employees of Youngblood & Martin paid you directly in cash? The employees of Youngblood & Martin paid you their part of the meals in cash and the company paid you a subsidy on those meals? A. Yes.

Q. Then, at another period, all the amount for meals for Youngblood & Martin employees was paid to you by payroll deduction? A. Yes.

Q. And they did not pay you in cash themselves, then?

A. It was held out of their wages, the same as the Row River Lumber Company employees.

Q. On Plaintiff's Exhibit No. 7, which is the statement by you as to your cash income during the year 1945, the year 1946 and the year 1947: That cash would include cash payments paid to you directly by Youngblood & Martin employees?

A. Yes. Some of it is on the statement and some here.

Q. Yes, ma'am.

A. Yes, that is correct. [229]

Mr. Scott: That is all.

Mr. Davidson: No questions.

(Witness excused.)

Mr. Scott: That finishes the plaintiff's case, your Honor.

Mr. Davidson: The defense has no further evidence to offer, your Honor.

(Testimony closed.)

(Oral argument of counsel.) [230]

REPORTER'S CERTIFICATE.

I, Ira G. Holcomb, a Court Reporter of the above-entitled Court, duly appointed and qualified, do hereby certify that on the 4th and 5th days of March, A.D. 1948, I reported in shorthand certain proceedings had in the above-entitled cause, that I subsequently caused my said shorthand notes to be reduced to typewriting, and that the foregoing transcript, pages numbered 1 to 230, both inclusive, constitutes a full, true and accurate transcript of said proceedings, so taken by me in shorthand on said dates as aforesaid, and of the whole thereof.

Dated this 22nd day of March, A.D. 1948.

/s/ IRA G. HOLCOMB,
Court Reporter.

[Endorsed]: Filed March 23, 1948.

[Endorsed]: No. 12154. United States Court of Appeals for the Ninth Circuit. William R. McComb, Administrator of the Wage and Hour Division, United States Department of Labor, Appellant, vs. Row River Lumber Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed January 14, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals for the
Ninth Circuit

No. 12,154

WILLIAM R. McCOMB, Administrator of the
Wage and Hour Division, United States De-
partment of Labor,

Appellant,

vs.

ROW RIVER LUMBER COMPANY, a Corpora-
tion,

Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON BY APPELLANT

Appellant William R. McComb, pursuant to Rule 19(6) of the rules of this Court, states that the points on which he intends to rely on appeal are

those points set forth in the "Statement of Points" filed on January 6, 1949, in the United States District Court for the District of Oregon.

Dated: January 24, 1949.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ BESSIE MARGOLIN,
Assistant Solicitor.

/s/ KENNETH C. ROBERTSON,
Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney, United States Department of Labor,
Attorneys for Appellant.

(Duly verified.)

[Endorsed]: Filed January 24, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF PARTS
OF RECORD NECESSARY FOR CONSID-
ERATION BY THIS COURT

Appellant William R. McComb, pursuant to Rule 19(6) of the Rules of this Court, states that the record necessary for consideration on appeal is the entire record on appeal, as certified and transmitted by the Clerk of the District Court to the Clerk of this Court.

Appellant respectfully recommends that the fol-

lowing designated exhibits be considered by the Court in their original form, and that the Court dispense with their reproduction in the printed transcript of the record:

1. Plaintiff-Appellant's Exhibit 3.
2. Plaintiff-Appellant's Exhibit 4.
3. Plaintiff-Appellant's Exhibit 6.

Dated: January 27, 1949.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ BESSIE MARGOLIN,
Assistant Solicitor.

/s/ KENNETH C. ROBERTSON,
Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney, United States Department of Labor,
Attorneys for Appellant.

[Endorsed]: Filed January 27, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STIPULATION AS TO ORIGINAL EXHIBITS

The parties hereto respectfully request that the following designated exhibits be considered by the Court in their original form, and that the Court dispense with their reproduction in the printed transcript of the record:

1. Plaintiff-Appellant's Exhibit 3.
2. Plaintiff-Appellant's Exhibit 4.
3. Plaintiff-Appellant's Exhibit 6.

Dated: February 3, 1949.

/s/ WILLIAM S. TYSON,
Solicitor.

/s/ BESSIE MARGOLIN,
Assistant Solicitor.

/s/ KENNETH C. ROBERTSON,
Regional Attorney.

/s/ JAMES F. SCOTT,
Senior Attorney, United States Department of Labor,
Attorneys for Appellant.

/s/ CARL E. DAVIDSON,
/s/ CHARLES P. DUFFY,
Attorneys for Appellee.

[Endorsed]: Filed February 7, 1949. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

ORDER AS TO ORIGINAL EXHIBITS

The parties having filed their stipulation herein and good cause therefor appearing, It Is Ordered that the following exhibits and parts of the record designated as necessary for consideration by this Court need not be reproduced in the printed transcript of record but will be considered by the Court in their original form:

1. Plaintiff-Appellant's Exhibit 3.
2. Plaintiff-Appellant's Exhibit 4.
3. Plaintiff-Appellant's Exhibit 6.

Dated: February 4, 1949.

So Ordered:

/s/ WILLIAM DENMAN,
Chief Judge.

/s/ CLIFTON MATHEWS,
/s/ WILLIAM HEALY,

United States Circuit Judges.

[Endorsed]: Filed February 7, 1949. Paul P. O'Brien, Clerk.

